

51-416

Supreme Court, U.S.

FILED

SEP 9 1991

DEPT. OF THE CLERK

No. \_\_\_\_\_

In The  
**Supreme Court of the United States**  
October Term, 1991

THE STATE OF MINNESOTA  
and THE STATE OF FLORIDA,

*Petitioners,*

v.

THE HONORABLE CHARLES A. BOWSHER,  
in his official capacity as Comptroller  
General of the United States; and  
THE HONORABLE NICHOLAS F. BRADY,  
in his official capacity as Secretary  
of the Treasury of the United States,

*Respondents.*

Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

JOE A. WALTERS  
\*ROBERT ARTHUR BRUNIG  
O'CONNOR & HANNAN  
3800 IDS Tower  
80 South Eighth Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 343-1200

*Attorneys for Petitioners*

\*Counsel of Record



## QUESTION PRESENTED

Whether the Department of the Treasury's refusal to account for or transfer custody of "unequivocally refundable" monies which departments and agencies of the United States transferred to the Department of the Treasury and which the Department of the Treasury holds for the "sole purpose" of delivery to the "rightful owners" who are citizens of the States of Minnesota and Florida and whose whereabouts are unknown in derogation of those States' state statutory rights to obtain custody of their citizens' unclaimed property violates the Tenth Amendment.

## PARTIES BELOW

The parties to the consolidated proceedings in the United States Court of Appeals for the District of Columbia Circuit included the States of Alabama, Arizona, Delaware, Hawaii, Illinois, Iowa, Kansas, Louisiana, Missouri, Montana, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, West Virginia and Wisconsin and the Commonwealths of Kentucky and Pennsylvania in addition to the parties whose names appear in the caption.

The States of Alabama, Arizona, Delaware, Hawaii, Illinois, Iowa, Kansas, Louisiana, Missouri, Montana, Nevada, New Hampshire, Oklahoma, Rhode Island, South Dakota, Utah and West Virginia and the Commonwealths of Kentucky and Pennsylvania are joining together to file a separate petition for writ of certiorari and will seek to present different questions. The States of Ohio and Wisconsin do not appear to seek further review.



## TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
PARTIES BELOW.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	v
PETITION.....	1
OPINIONS .....	2
JURISDICTIONAL STATEMENT .....	2
CONSTITUTION AND STATUTES .....	2
STATEMENT OF THE CASE.....	3
REASONS FOR ISSUING THE WRIT -	
I. The Court Of Appeals Decided An Important Question Of Federal Constitutional Law In A Way That Conflicts With Applicable Decisions Of This Court .....	8
II. This Court Ought To Revisit And To Overrule Or Distinguish Garcia v. San Antonio Metropolitan Transit Authority.....	16
CONCLUSION .....	20
APPENDIX -	
Decision And Judgment (D.C. Cir. Jun. 11, 1991).....	App. 1
Order (D.D.C. Jun. 15, 1990).....	App. 9
Memorandum Decision And Order (D.D.C. Mar. 30, 1990) .....	App. 12

## TABLE OF CONTENTS – Continued

	Page
Constitution And Statutes –	
U.S. CONST. art. I, §8, cl. 1 .....	App. 53
U.S. CONST. art. IV, §3.....	App. 53
U.S. CONST. art. VI, cl. 2.....	App. 53
U.S. CONST. amend. X .....	App. 53
Fla. Stat. §717.101 <i>et seq.</i> .....	App. 54
Minn. Stat. §345.31 <i>et seq.</i> .....	App. 98
31 U.S.C. §1321 <i>et seq.</i> .....	App. 126

## TABLE OF AUTHORITIES

Page

## CASES:

Anderson Nat'l Bank v. Lockett, 321 U.S. 233 (1944) .....	14, 15
Board of Regents v. Roth, 408 U.S. 564 (1972) .....	13
Butner v. United States, 440 U.S. 48 (1979) .....	12
Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798) .....	12
Commissioner v. Seigel, 250 F.2d 339 (9th Cir. 1957) .....	14
Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948) .....	15
Cope v. Cope, 137 U.S. 682 (1891) .....	12
County of Lane v. Oregon, 74 U.S. (7 Wall.) 71 (1868) .....	12
Cunnius v. Reading School Dist., 198 U.S. 458 (1905) .....	11
De Sylva v. Ballentine, 351 U.S. 570 (1956) .....	13
Erie R.R. v. Tompkins, 304 U.S. 64 (1933) .....	12
Ex parte Jackson, 96 U.S. 727 (1878) .....	9
FERC v. Mississippi, 456 U.S. 742 (1982) .....	12
Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) .....	8, 17, 18, 19
Gibbons v. Ogden, 22 U.S. (9 Wheat.) 186 (1824) .....	9
Humble Oil & Ref. Co. v. Copeland, 398 F.2d 364 (4th Cir. 1968) .....	14

## TABLE OF AUTHORITIES – Continued

	Page
M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819) .....	9
Morgan v. Commissioner, 309 U.S. 78 (1940) .....	13
Panhandle Oil Co. v. Mississippi ex rel. Knox, 277 U.S. 218 (1928) .....	9
Reconstruction Fin. Corp. v. Beaver County, 328 U.S. 204 (1946) .....	13
Roth v. Delano, 338 U.S. 226 (1949) .....	15
Standard Oil Co. v. New Jersey ex rel. Parsons, 341 U.S. 428 (1941) .....	10, 14
Texas v. New Jersey, 379 U.S. 674 (1965) .....	10, 14
United States v. Crosby, 11 U.S. (7 Cranch) 115 (1812) .....	13
United States v. Fox, 94 U.S. 315 (1877) .....	13
United States v. Klein, 303 U.S. 276 (1938) .....	15
Yiatchos v. Yiatchos, 376 U.S. 306 (1964) .....	13
Younger v. Harris, 401 U.S. 37 (1971) .....	12
 CONSTITUTION:	
U.S. CONST. art. I, §8, cl. 1 .....	10
U.S. CONST. art. IV, §3 .....	10
U.S. CONST. art. VI, cl. 2 .....	9
U.S. CONST. amend. X .....	2, 8, 11, 18, 19

## TABLE OF AUTHORITIES – Continued

Page

## STATUTES:

Fla. Stat. §717.101.....	2
Fla. Stat. §717.103.....	3
Fla. Stat. §717.117.....	3
Fla. Stat. §717.118.....	4
Fla. Stat. §717.119.....	3
Fla. Stat. §717.1201 .....	3
Fla. Stat. §717.124.....	4
Fla. Stat. §717.125.....	4
Minn. Stat. §345.31 .....	2
Minn. Stat. §345.38 .....	3
Minn. Stat. §345.41 .....	3
Minn. Stat. §345.42 .....	4
Minn. Stat. §345.43 .....	3
Minn. Stat. §345.44 .....	3
Minn. Stat. §345.49 .....	4
28 U.S.C. §1254.....	2
31 U.S.C. §321.....	6
31 U.S.C. §725p.....	4
31 U.S.C. §1321.....	2, 5
31 U.S.C. §1322.....	2, 4, 6
31 U.S.C. §3512.....	6
31 U.S.C. §3513.....	6

## TABLE OF AUTHORITIES – Continued

Page

## OTHER AUTHORITIES:

R. Berger, <i>FEDERALISM: THE FOUNDERS' DESIGN</i> (1987) . . . .	11
D. Cowans, <i>BANKRUPTCY LAW &amp; PRACTICE</i> (1989) . . . . .	14
A. Hamilton, <i>THE FEDERALIST</i> No. 45 (J. Cooke ed. 1961) . . . . .	18
W. Hurst, <i>THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES</i> (1970) . . . . .	11
J. Madison, <i>THE FEDERALIST</i> No. 17 (J. Cooke ed. 1961) . . . . .	18
Note, "Origins & Development of Modern Escheat," 61 COLUM. L. REV. 1319 (1961) . . . . .	11
1 TREAS. FIN. MAN. . . . .	6, 7
L. Tribe, <i>AMERICAN CONSTITUTIONAL LAW</i> (2d ed. 1988) . . . . .	12
M. Weinstein, <i>MERTENS LAW OF FEDERAL INCOME TAX</i> (1980) . . . . .	14

No. \_\_\_\_\_

— ♦ —  
In The  
**Supreme Court of the United States**  
October Term, 1991  
— ♦ —

THE STATE OF MINNESOTA  
and THE STATE OF FLORIDA,

*Petitioners,*

v.

THE HONORABLE CHARLES A. BOWSHER,  
in his official capacity as Comptroller  
General of the United States; and  
THE HONORABLE NICHOLAS F. BRADY,  
in his official capacity as Secretary  
of the Treasury of the United States,

*Respondents.*

— ♦ —  
**Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The District Of Columbia Circuit**  
— ♦ —

**PETITION FOR WRIT OF CERTIORARI**  
— ♦ —

Petitioners respectfully pray that a writ of certiorari  
issue to review the judgment and opinion of the United  
States Court of Appeals for the District of Columbia  
Circuit entered in this proceeding on June 11, 1991.

## OPINIONS

The opinion of the District of Columbia Circuit is reported at \_\_\_ U.S. App. D.C. \_\_\_, 935 F.2d 332, and is set forth in the Appendix. (App. 1-8). The unreported order of the district court denying the State of Nevada's motion to amend is set forth in the Appendix. (App. 9-11). The memorandum decision and order of the district court is reported at 734 F. Supp. 525 and is set forth in the Appendix. (App. 12-52).

---

## JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on June 11, 1991. This petition for certiorari is being filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

---

## CONSTITUTION AND STATUTES

This case involves the Supremacy Clause of and the Tenth Amendment to the Constitution of the United States; 31 U.S.C. §§1321 & 1322; Fla. Stat. §§717.101-.1401; and Minn. Stat. §§345.31-.56. Because of the length of the statutes, the text of the Supremacy Clause and the Tenth Amendment and of the statutes is set forth in the Appendix. (App. 53-133).

---



## STATEMENT OF THE CASE

Most<sup>1</sup> States have enacted "unclaimed property" statutes.<sup>2</sup> Petitioners are two of those States and assert a right to custody of the monies which the United States owes to the citizens of those States<sup>3</sup> and which the Department of the Treasury currently holds as monies "unequivocally refundable" to those citizens. Petitioners contend that they are entitled to an accounting and to the delivery of the monies in order to permit Petitioners to give notice to their citizens and to allow those citizens to appear and claim the monies.

Each Petitioner applies its unclaimed property statute only to monies whose "apparent owner" has a "last known address" in that State. Fla. Stat. §717.103(1); Minn. Stat. §§345.38, subd. 3. Each Petitioner requires each "holder" of such monies to report and deliver the unclaimed monies to the State. Fla. Stat. §§717.117 & 717.119(1); Minn. Stat. §§345.41(a) & 345.43, subd. 1. Each Petitioner assumes responsibility for safekeeping the monies and relieves each "holder" who delivers the monies to the State of any liability. Fla. Stat. §717.1201(1); Minn. Stat. §345.44. Each Petitioner is obligated to and

---

<sup>1</sup> Petitioners are aware of forty-two States which have enacted such statutes.

<sup>2</sup> The "unclaimed property" statutes are modern codifications of the ancient power of *bona vacantia*. Although the doctrine of escheat originally applied only to real estate and the power of *bona vacantia* applied to personalty, the distinction is no longer observed, and both are subsumed under the doctrine of escheat.

<sup>3</sup> The United States claims no interest in the monies.

does publish notice to the rightful owners concerning the unclaimed monies. Fla. Stat. §717.118; Minn. Stat. §345.42. Any person who contends that he is a rightful owner of such monies may file a claim with the State. Fla. Stat. §§717.124(1) & 717.125; Minn. Stat. §345.49. Each Petitioner makes a determination of the validity of any claim and, if the State determines the claim to be valid, pays the claim. Fla. Stat. §§717.124(2) & 717.125; Minn. Stat. §345.49.

Respondents hold unclaimed monies. (App. 35). The rightful owners of a portion of those monies are citizens of the two States. (App. 34, 42). Respondents refuse to account for or deliver those monies which are "unequivocally refundable" to their citizens to Petitioners. (App. 23-24). Respondents ground their refusal on 31 U.S.C. §1322.

31 U.S.C. §1322<sup>4</sup> establishes a Treasury trust fund receipt account "Unclaimed Monies Of Individuals Whose Whereabouts Are Unknown." The statute requires Respondent the Honorable Nicholas M. Brady, as Secretary of the Treasury of the United States (hereinafter "the

---

<sup>4</sup> The genesis of 31 U.S.C. §1322 was in the Permanent Appropriation Repeal Act of 1934, 48 Stat. 1224, which served to overhaul the accounting practices of the Department of the Treasury. Section 17 of the Permanent Appropriation Repeal Act, 31 U.S.C. §725p (1976), abolished certain appropriation accounts and placed unobligated balances in such accounts into a trust fund receipt account to be maintained by the Secretary and to be designated "Unclaimed Moneys Of Individuals Whose Whereabouts Are Unknown." In 1949 Congress enacted an appropriations bill which appropriated such sums "as may be necessary" to make payments from the "unclaimed moneys" trust fund receipt account. In 1982 Congress repealed inconsistent provisions and enacted 31 U.S.C. §1322.

Secretary"), to transfer to that account those funds which had been in trust funds listed in 31 U.S.C. §1321(a)(1)-(82) or analogous trust funds listed in 31 U.S.C. §1321(b) for more than one year and which represent monies belonging to individuals whose whereabouts are unknown. The statute expressly provides that claims to those monies are to be paid from the account and that necessary amounts will be appropriated for payment of the claims.

The Secretary implements the federal statutory scheme. He directs departments and agencies of the United States to analyze the trust funds and revolving and deposit accounts which the departments and agencies maintain and to transfer unclaimed monies to the Treasury. After the departments and agencies transfer the funds, the Secretary<sup>5</sup> acts as custodian of the funds; however, he does not obtain or maintain access to the departmental or agency records which set forth the nature or origin of the monies transferred by the departments and agencies. The various transferring departments and agencies maintain the only records of the unclaimed monies. If a rightful owner attempts to make a claim, he or she may do so only by submitting his or her claim to the appropriate department or agency. If the appropriate department or agency determines that the claim is proper, it initiates payment by certifying a voucher and transmitting the voucher to the appropriate disbursing official. The Secretary has no involvement in or knowledge of the procedures established by the various departments and

---

<sup>5</sup> The Secretary acts through the Financial Management Service.

agencies for presenting claims or for determining their validity.

The Secretary has designated two funds to receive deposits of monies deemed unclaimed pursuant to 31 U.S.C. §1322. Trust fund account number 20X6133 serves as a depository for monies in the amount of \$25.00 or more; miscellaneous receipt account number 1060 serves as a depository for monies in amounts of less than \$25.00 and for those monies which do not otherwise meet the criteria for transfer into Account 20X6133. Both accounts "represent moneys held for rightful owners."<sup>6</sup> 1 TREAS. FIN. MAN. §6-3020.<sup>7</sup> Account 20X6133 contains monies which are "unequivocally refundable," and the account's "sole purpose . . . is to hold such money in trust for rightful owners." 1 TREAS. FIN. MAN. §6-3040.10. Account 1060 is a true "miscellaneous receipts" account; deposits made into this account are not directly available

---

<sup>6</sup> The Court of Appeals incorrectly characterized the dispute:

The money here is federal money. That various persons have claims against the United States in amounts exactly matching the funds, and intended by Congress to be paid from these funds, does not give those individuals a property interest in the money.

(App. 5). In fact, the Secretary himself characterizes the monies as ones as to which "there is no doubt as to legal ownership of the funds," 1 TREAS. FIN. MAN. § 6-3040.10, which are "unquestionably refundable," *id.*, and which are "held [solely] for rightful owners." 1 TREAS. FIN. MAN. § 6-3020.

<sup>7</sup> The Secretary promulgated the TREASURY FINANCIAL MANUAL pursuant to 31 U.S.C. §§321, 3512(a)(5) & 3513(a).

for disbursement. 1 TREAS. FIN. MAN. §6-3075. In the event the claims are received by departments and agencies of the United States seeking payment of monies transferred to account 1060, and the appropriate department or agency determines that refunds are justified, claims are paid from account 20X1807. See 1 TREAS. FIN. MAN. §6-3075.

Respondent the Honorable Charles A. Bowsher, the Comptroller General (hereinafter "the Comptroller General"), has statutory authority to settle claims against the United States. When several States requested that the Comptroller General acknowledge that those States had a valid claim to monies in the unclaimed monies account, asked for a listing of the existing trust funds from which the monies had been transferred, the amounts transferred and the identities of the transferring agencies and sought assurances that the monies would not be disbursed except to "lawful owners of the monies or the respective states of residence," (App. 22), the Comptroller General refused to consider the request as a claim. (App. 23). Five States then requested that the Secretary provide the States with records of "unclaimed property" in the custody of the departments and agencies which were the property of residents of those States. (App. 23). One State asked that the Secretary "remit" the monies to be listed in response to its request to that State. (App. 23). Both the Secretary and the Comptroller General refused to provide the records requested or to transfer the monies. (App. 23).

Several States commenced suit. Those States sought to compel Respondents to account for and deliver the "unclaimed property" of their citizens and offered to hold Respondents harmless against any claims as to

which monies had been delivered. Petitioners joined in that suit.<sup>8</sup>

The district court held that Petitioners and the other States had standing and that the controversy was "ripe" and granted summary judgment against Petitioners and the other States on the ground that the Congress was authorized to "place unclaimed monies in the custody of the Secretary," that the Supremacy Clause protected that authorization and that Petitioners' challenge to the validity "of the statutory scheme under the Tenth Amendment [was] meritless."<sup>9</sup> (App. 31-46). The Court of Appeals affirmed and held that Petitioners' argument that "the Tenth Amendment [forbade] Congress to maintain custodial possession of the monies is without merit." (App. 7).

---

## REASONS FOR ISSUING THE WRIT

### I. The Court Of Appeals Decided An Important Question Of Federal Constitutional Law In A Way That Conflicts With Applicable Decisions Of This Court.

This case is an important one relating to the law of property: who is to enjoy the right to possess property

---

<sup>8</sup> Ultimately, twenty-three States joined in that suit. (App. 3).

<sup>9</sup> Because of the Secretary and the Comptroller General's arguments in the district court and the district court's lack of explanation of its rejection of Petitioners' Tenth Amendment claim, (App. 46), it would seem reasonable that the district court deemed Petitioners' Tenth Amendment argument to be "meritless" because of its reading of *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

which is unclaimed by its nominal owner and which is in the possession of the United States. The rule of decision is grounded in State law. The authority for the States to establish a rule of decision is guaranteed by the Tenth Amendment.

The law of escheat has its roots in the common law and predates the adoption of the Constitution of the United States and the Bill of Rights. The law of escheat developed over time and – in some States – has been codified. The law of escheat has been and is a matter of “State law.” The law of escheat vests each State with a possessory interest in unclaimed property, whether in its own right or as the custodian for its citizens who have yet to claim the property.

The district court and the Court of Appeals dismissed Petitioners’ attempts to enforce the law of escheat as meddlesome and preempted by the Supremacy Clause,<sup>10</sup>

---

<sup>10</sup> The Supremacy Clause provides:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the contrary notwithstanding.

U.S. CONST. art. VI, cl. 2. The Supremacy Clause itself does not empower the United States to take any action, and authority to act must be derived from other provisions of the Constitution. See, e.g., *Ex parte Jackson*, 96 U.S. 727, 732 (1878); *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U.S. 218, 221 (1928); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 186, 187-88 (1824); *M’Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405-06 (1819).

(Continued on following page) -



the fact is that Petitioners and twenty-one other States<sup>11</sup> were attempting only to enforce their historic rights, see *Texas v. New Jersey*, 379 U.S. 674, 677-82 (1965) ("it has been the unquestioned rule in all jurisdiction that only the State in which [tangible] property is located may escheat;" intangible property is "subject to the right of the State [owner's] last known address to recover it" if that State's laws provide for escheat); *Standard Oil Co. v. New Jersey ex rel. Parsons*, 341 U.S. 428, 435-36 & n.5 (1941) ("it is clear that a state . . . may use its legislative power

---

(Continued from previous page)

The Constitution does not empower Congress to legislate concerning the ownership or possession of property in which the United States claims no interest. Although the Property Clause does empower Congress "to dispose of and make all needful Rules and Regulations respecting . . . Property belonging to the United States," U.S. CONST. art. IV, §3, cl. 2, and although the Debts Clause does authorize Congress "to pay the Debts . . . of the United States," U.S. CONST. art. I, §8, Respondents' actions involve neither provision. The power to dispose of "Property belonging to the United States" does not authorize Congress to usurp the authority of the States to determine who is entitled to possess monies whose "rightful owner" is one other than the United States. The authority to pay debts does not include the authority to refuse to account for or to pay over to one whom State law determines to be one who stands in the place of the "rightful owner." The various departments and agencies have acknowledged the obligations and have attempted to pay them. Respondents' actions simply seek to avoid delivery of the monies which admittedly are due and establish a newly created "right" to possess monies in which the departments and agencies claim no interest.

<sup>11</sup> Some of those other States are petitioning for a writ of certiorari in *Alabama v. Bowsher*, No. 91-\_\_\_ (U.S., pet. for cert. filed, Sept. \_\_\_, 1991).



to dispose of property . . . belonging to unknown persons"); *Cunnius v. Reading School Dist.*, 198 U.S. 458, 469 (1905) ("the right to regulate concerning the . . . property of absentees is an attribute which, in its very essence, must belong to all governments"), and to insist that the Secretary and the Comptroller General bow to limits imposed by the Tenth Amendment. See Note, "Origins & Development of Modern Escheat," 61 COLUM. L. REV. 1319, 1336 (1961) ("Constitution makes no provision for escheat;" United States "is considered to have no escheat power;" the States are the entities to which "ownerless property . . . reverts").

The Bill of Rights limits the power of the United States:

The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or the people.

U.S. CONST. amend. X. Because the Constitution did not and does not prohibit a State from establishing or refining the law of property in general or the law of escheat in particular, Petitioners and the other States continue to enjoy the right to do so.

The Tenth Amendment represents "a political bargain, key terms of which assume the continuing vitality of the States as prime lawmakers in most affairs." W. Hurst, *THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES* 40 (1970); accord, R. Berger, *FEDERALISM: THE FOUNDERS' DESIGN* 77-96 (1987). Although the political and economic growth of the United States resulted in federal regulation more expansive than ever

anticipated by the Founders, this Court consistently has upheld the primacy of the States within certain spheres of activity in order to preserve their continued role in the federal system. L. Tribe, *AMERICAN CONSTITUTIONAL LAW* 378-400 (2d ed. 1988); see, e.g., *FERC v. Mississippi*, 456 U.S. 742, 775 (1982) (Powell, J., concurring in part and dissenting in part) (Court must not permit Congress to "nibble away at State sovereignty, bit by bit, until some day essentially nothing is left but a gutted shell"); *Younger v. Harris*, 401 U.S. 37, 43 (1971) (Black, J.) (recognizing State primacy over criminal law); *Erie R.R. v. Tompkins*, 304 U.S. 64, 90 (1933) (abolishing federal common law and recognizing primacy of State courts and interpreting State law because Constitution recognizes and preserves the autonomy and independence of the States); *County of Lane v. Oregon*, 74 U.S. (7 Wall.) 71, 76 (1868) ("But in many articles of the Constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the National Government are reserved"); *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 387 (1798) (State legislatures retain all powers of legislation which are not expressly taken away by the Constitution of the United States).

The ownership, control and disposition of property are matters governed by State law. See, e.g., *Butner v. United States*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law"); *Cope v. Cope*, 137 U.S. 682, 684 (1891) ("distribution of and the right of

succession to the estates of deceased persons are matters exclusively of state cognizance"); *United States v. Fox*, 94 U.S. 315, 320 (1877) ("It is an established principle of law, everywhere recognized, . . . that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated" even if the United States claims an interest in the property); *United States v. Crosby*, 11 U.S. (7 Cranch) 115, 116 (1812) ("title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situated"). The courts of the United States, including this Court, have been careful to preserve the primacy of the States in the area of the law of property. Because there is no federal common law of property, the courts of the United States consistently look to State law for the rule of decision as to property rights. See e.g., *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) ("property interests" are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law"); *Yiatchos v. Yiatchos*, 376 U.S. 306, 309 (1964) (State law defines property interests of purchaser of bonds issued by the federal government); *De Sylva v. Ballentine*, 351 U.S. 570, 580-81 (1956) (State law determines whether illegitimate children are entitled to renew a parent's copyright because "the controlling question under state law should be whether the child would be an heir of the author"); *Reconstruction Fin. Corp. v. Beaver County*, 328 U.S. 204, 210 (1946) (State law definition of "real property" controls operation of federal statute that permits States to tax only "real property" of federal agencies); *Morgan v. Commissioner*, 309 U.S. 78, 80

(1940) (State law creates legal interests and rights in property); *Humble Oil & Ref. Co. v. Copeland*, 398 F.2d 364, 366 (4th Cir. 1968) (whether properties real or personal are to be determined by law of the State where the property is situated); *Commissioner v. Seigel*, 250 F.2d 339, 344 n.8 (9th Cir. 1957) ("State law creates legal interest and rights" for the purposes of the Internal Revenue Code); D. Cowans, *BANKRUPTCY LAW & PRACTICE* §3.8 at 221 (1989) ("As to what is property of the estate, State law will indicate the nature and extent of property interests. There is no federal common law of bankruptcy, for example, on what the interest of a partner or joint tenant may be or what marital property interest such as community property or entireties may give a debtor"); M. Weinstein, *MERTENS LAW OF FEDERAL INCOME TAX* §61.09 (1980) (State law determines whether income is community property, existence of life tenancies or tenancies by the entirety, dates for personal liability in real estate taxes, assignment of rights, lessee obligations, merger of estates, whether an estate is vested or contingent and lien priorities).

This Court has stated that "it is clear that a state, subject to constitutional limitation, may use its legislative powers to dispose of property within its reach belonging to unknown persons." *Standard Oil Co. v. New Jersey ex rel. Parsons*, 341 U.S. at 435-36; cf. *Texas v. New Jersey*, 380 U.S. at 682; *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 248-49 (1944) ("obligation to pay" requires payment "to the persons entitled to demand payment according to the law of the state," including the State itself). This Court has recognized that the "right of appropriation by the state of

abandoned property has existed for centuries." *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 547 (1948). This Court has upheld a State's right to escheat proceeds which were deposited with a district court of the United States and which were transferred to the Treasury as unclaimed property. *United States v. Klein*, 303 U.S. 276, 282 (1938) (possession of funds in the Treasury "does not operate to control" the power which the State may constitutionally exercise over persons and property within its territory"). This Court has enforced a State's power of escheat in other cases. *E.g., Roth v. Delano*, 338 U.S. 226, 228-31 (1949) (State may constitutionally escheat unclaimed dividends from the liquidation of a national bank even though the dividends were held by the Comptroller of Currency); *Anderson Nat'l Bank v. Lockett*, 321 U.S. at 252-53 (Kentucky statute which required national banks to surrender and account for abandoned accounts is constitutional).

Petitioners did and do seek only to enforce their own statutes as the rule of decision. As this Court noted: "escheat or appropriation by the state of property in fact abandoned or without an owner is, as we have seen, as old as the common law itself." *Anderson Nat'l Bank v. Lockett*, 321 U.S. at 251. Petitioners seek only to exercise their power to regulate the succession of property belonging to their citizens. The United States has no comparable authority, whether statutory or under common law, and cannot exercise such power consistent with the Tenth Amendment.

Public policy and the general interest of society require that monies which are "unequivocally refundable" ought not remain abandoned and without an owner

legally capable of alienating the property interest in the monies. Cf. *Cunnius v. Reading School Dist.*, 198 U.S. at 469. Those monies ought to be accounted for and delivered to the States to whom the Tenth Amendment assures a right to determine claims of ownership.

The Court of Appeals decided the Tenth Amendment question without explanation, but it did so in a way that called into question applicable decisions of this Court. The Court of Appeals decision paves the way for the creation of a federal common law of property, denigrates the historic power of the States to establish and enforce the interests of persons in property and strikes a new balance between the national government and the States. Because the Court of Appeals decision does so without reference to the balance struck by the Tenth Amendment and because the issue is of importance to all the States, this Court ought to review the decision.

## II. This Court Ought To Revisit And To Overrule Or Distinguish *Garcia v. San Antonio Metropolitan Transit Authority*.

In *Garcia v. San Antonio Metropolitan Transit Authority*, this Court reconsidered "[w]hether or not the principles of the Tenth Amendment as set forth in *National League of Cities v. Usery*, 426 U.S. 833 (1976), should be reconsidered." 469 U.S. at 536. This Court went on to overrule *National League of Cities*. 469 U.S. at 531. This Court explained that it continued

to recognize that the States occupy a special and specific position in our constitutional system and that the scope of the Congress' authority

under the Commerce Clause must reflect that position. But the principal and basic limit on the federal commerce power is that inherent in all congressional action the built-in restraints that our system provides through state participation in federal governmental action. The political process ensures that laws that unduly burden the States will not be promulgated.

462 U.S. at 556.

The dissent in *Garcia* warned:

Whatever effect the Court's decision may have in weakening the application of stare decisis, it is likely to be less important than what the Court has done to the Constitution itself. A unique feature of the United States is the *federal* system of the government guaranteed by the Constitution and implicit in the very name of our country. Despite some genuflecting in the Court's opinion to the concept of federalism, today's decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause.

469 U.S. at 559-60 (Powell, J.) (dissenting opinion) (emphasis in original). The Court of Appeals transformed the dissent's warning into a far-reaching reality. The Court of Appeals read the Tenth Amendment out of the Constitution and relegated the States to subservient status, stripped them of their sovereignty and left them to go "hat in hand" to Congress whenever they wish to avoid a Congressional veto of their laws. This Court ought to restore the system of federalism envisioned by the Founders and embodied in the Constitution, to



breathe renewed life into the Tenth Amendment and to overrule or distinguish *Garcia*.

The Founders looked on the States as separate sovereigns and expected the States, not the United States, to establish laws governing property. James Madison elaborated on the separate spheres of sovereignty intended for the federal government and the State governments:

The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. . . . The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and *properties* of the people; and the internal order, improvement, and prosperity of the State.

J. Madison, *THE FEDERALIST* No. 45 at 313 (J. Cooke ed. 1961) (emphasis added). Alexander Hamilton maintained that the States would be "the immediate and visible guardian of life and *property*." A. Hamilton, *THE FEDERALIST* No. 17 at 107 (J. Cooke ed. 1961) (emphasis added). Neither the Founders nor this Court expressed an intention that the United States, rather than the States, was to dominate the law of property, was to develop a law of escheat or was to act as a custodian of unclaimed property.

Three of the four *Garcia* dissenters were "confident" that this Court would "in time again assume its constitutional responsibility" and recognize that



Congress could not act . . . to infringe on certain fundamental aspects of state sovereignty that are essential "the States' separate and independent existence."

469 U.S. at 579, 589 (Rehnquist & O'Connor, JJ.) (dissenting opinions). This is the appropriate time.

This Court should shoulder its responsibility and recognize and correct *Garcia's* error. This Court should overrule *Garcia* in order to ensure that the States are able rightfully to exercise the "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States." This Court should reserve to the States alone authority to determine issues involving the possession of and title to property and should guarantee to the States their right to custody of their citizens' unclaimed property – whether in the hands of public or private corporations, of individuals or of the United States.

This Court need not overrule *Garcia*. It has another alternative: distinguishing *Garcia*. *Garcia* attempted to deal with the tension between the Commerce Clause and the Tenth Amendment. Even if this Court were to continue to hold that Congress is constitutionally empowered to regulate any "commerce" in which a State may choose to engage, it might – and should – also hold that the Tenth Amendment does not authorize Congress to establish a uniform rule concerning the custody of property, including trust funds which represent "monies held for rightful owners" and which are "unequivocally refundable" to those owners. To the extent that *Garcia* is to remain good law, it ought to be so limited.



## CONCLUSION

For the foregoing reason, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

JOE ARTHUR WALTERS

\*ROBERT A. BRUNIG

O'CONNOR & HANNAN

3800 IDS Tower

80 South Eighth Street

Minneapolis, Minnesota 55402

Telephone: (612) 343-1200

*Attorneys for Petitioners*

\*Counsel of Record

September 9, 1991.

App. 1

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

Argued March 8, 1991

Decided June 11, 1991

No. 90-5184

STATE OF ARIZONA, et al.,

Appellants,

v.

CHARLES A. BOWSHER, IN HIS OFFICIAL CAPACITY  
AS COMPTROLLER GENERAL OF THE UNITED STATES, et al.

---

No. 90-5223

STATE OF ARIZONA -

THE STATES OF MINNESOTA, OHIO AND FLORIDA,

Appellants,

v.

CHARLES A. BOWSHER, IN HIS OFFICIAL CAPACITY  
AS COMPTROLLER GENERAL OF THE UNITED STATES, et al.

---

App. 2

Appeal from the United States District Court  
for the District of Columbia

(Civil Action Number 88-03717)

---

*Andrew P. Miller*, with whom *Bernard Nash*, *Peter J. Kadzik* and *Frank F. Flegal* were on the brief, for appellants State of Arizona, et al. in No. 90-5184.

*Joe A. Walters*, with whom *Donald S. Arbour* and *E. William Crotty* were on the brief, for appellants States of Minnesota, Ohio and Florida in No. 90-5223.

*Deborah Ruth Kant*, Attorney, Department of Justice, with whom *Stuart M. Gerson*, Assistant Attorney General, *Jay B. Stephens*, United States Attorney and *Barbara C. Biddle*, Attorney, Department of Justice, were on the brief, for appellees in Nos. 90-5184 and 90-5223.

Before: EDWARDS, WILLIAMS and RANDOLPH, Circuit Judges.

*Opinion for the Court filed by Circuit Judge WILLIAMS.*

WILLIAMS, Circuit Judge: By statute, the United States Department of the Treasury exercises custody over funds "represent[ing]" money that federal agencies owe to American citizens whose whereabouts are unknown. Twenty-three states claim a right to assume custody over these funds pursuant to their custodial taking laws. The district court held that the Supremacy Clause, art. VI, cl. 2, bars the states' claim. See *Alabama v. Bowsher*, 734 F. Supp. 525 (D.D.C. 1990).<sup>1</sup> We agree.

\* \* \*

---

<sup>1</sup> The district court also ruled that the states had failed to exhaust the applicable administrative remedies. As the government does not press this issue on appeal, we do not consider it.

### App. 3

31 U.S.C. § 1322 requires the Secretary of the Treasury to

transfer to the Treasury trust fund receipt account 'Unclaimed Moneys of Individuals Whose Whereabouts are Unknown' that part of the balance of a trust fund account named in section 1321(a)(1)-(82) of this title or an analogous trust fund established under section 1321(b) of this title that has been in the fund for more than one year and represents money belonging to individuals whose whereabouts are unknown. Subsequent claims to the transferred funds shall be paid from [this account].

Section 1321, in turn, sets up trust funds for such diverse sources of federal debt as funds of federal prisoners (§ 1321(21)), pay of the Navy (§ 1321(a)(23)), certain unclaimed condemnation awards (§ 1321(a)(53)), and miscellaneous trust funds of Indian tribes (§ 1321(a)(67)). To fulfill its statutory duty, the Treasury has set up two holding accounts, "account 20X5133" and "account 1060", from which (as a general matter) it disburses money to claimants after the owing agency authorizes the payment. See generally 31 U.S.C. §§ 3325, 3528; I Treasury Financial Manual 6-3000 ff.

Acting under their unclaimed property statutes, see, e.g., Ariz. Rev. Stat. Ann. §§ 44-301 to -340 (1956 & Supp. 1990), twenty-three states assert a right to custody of the money that the Treasury currently holds to pay federal debts to citizens of those states. The states claim no escheat; they seek only temporary custody over the money until the rightful owners appear with valid claims. (In truth, of course, many of the rightful owners will never show up.)

#### App. 4

Under the intergovernmental immunity component of Supremacy Clause jurisprudence, the states may not directly regulate the federal government's operations or property. See *Hancock v. Train*, 426 U.S. 167, 178-80 (1976); see also *North Dakota v. United States*, 110 S. Ct. 1986, 1995 (1990) (plurality op.); *id.* at 2003-07 (opinion of Brennan, J.); *McCulloch v. Maryland*, 4 Wheat. 316 (1819). Indeed, the Constitution itself specifies that Congress retains the "[p]ower to dispose of and make all needful Rules and Regulations respecting the . . . Property belonging to the United States. . . ." U.S. Const., art. IV, § 3, cl. 2. The issues before us, then, are whether the federal government has a property interest in the relevant accounts, and, if so, whether the states' claims here are attempts to regulate that interest.

When the United States sets aside money for the payment of specific debts, it does not thereby lose its property interest in that money. Thus, in *Buchanan v. Alexander*, 45 U.S. (4 How.) 20, 20-21 (1846), the Supreme Court prohibited creditors from garnishing money held by the purser of the frigate *Constitution* to pay its seamen's wages, reasoning that "[s]o long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury." See also *In re Joliet-Will County Community Action Agency*, 847 F.2d 430, 432-33 (7th Cir. 1988) (reaffirming *Buchanan's* authority and applying it to federal funds held by a federal grantee as trustee to carry out the grant); *Palmiter v. Action, Inc.*, 733 F.2d 1244, 1247 (7th Cir. 1984); *Haskins Bros & Co. v. Morgenthau*, 85 F.2d 677, 681 (App. D.C. 1936) (applying the United States's immunity as sovereign to federal funds even though they

were earmarked for a specific purpose). The money here is federal money. That various persons have claims against the United States in amounts exactly matching the funds, and intended by Congress to be paid from these funds, does not give those individuals a property interest in the money.

Thus, the states' plan would amount to direct regulation of federal property. In extracting funds from the Treasury, the states would effectively subordinate federal property to their own laws and appropriate that property, at least for a period, for themselves. While the states protest that they merely wish to "further[] the federal government's presumed purpose to return the unclaimed property to its true owners," Reply Br. of Alabama et al. at 13, the Supremacy Clause does not permit them to take over a federal program just because they think they can do it better.

The outcome would be the same if we approached the Supremacy Clause analysis as a matter of preemption. A federal statute preempts a state law where the latter "stands as an obstacle to the accomplishment and execution of the full objectives of Congress." See *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368-69 (1986); see also *Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153 (1982). In passing § 1322, Congress was concerned to preserve or advance the convenience both of the claimant in securing payment and of the government in making it. As one architect of § 1322 noted:

This proviso is simply a time-saving bookkeeping device. Its object is to put all unclaimed money accounts under one head, so that they

may be identified on the books of the Government. The transfer does not impair the principal of the fund or make the unclaimed moneys less available. On the contrary, it really makes them more easily identifiable and, if anything, more accessible when the parties who are entitled to them turn up to claim them.

78 Cong. Rec. H8244 (daily ed. May 7, 1934) (statement of Rep. Griffin); see also *Permanent Appropriations: Hearing Before the Subcomm. of the House Comm. on Appropriations*, 73d Cong., 2d Sess. at 216-27 (1934) ("Hearing") (statement of Rep. Griffin). Although some members of Congress questioned whether § 1322 was well suited to the stated goals, see Hearing at 354; cf. *id.* at 526, 916, that is irrelevant here; our acceptance of the states' position would plainly thwart Congress's aims. Transferring the money from the Treasury to the states would surely make it less, not more, accessible to claimants, who presumably picture the federal government as the relevant payor. Alternatively, for the federal government to send the money off to a state, and then recoup it for purposes of payment, would multiply the transactions needed to accomplish the otherwise fairly simple federal objective. Few plans would more straightforwardly obstruct "the accomplishment and execution of the full objectives of Congress".

The states seek to bolster their position by suggesting that their custodial takings laws come to us with a patina of ancient history. To a large extent that patina belongs only to escheat provisions, which these are not. In any event, "[t]he relative importance to the State of its own law is not material when there is a conflict with a valid



federal law, for the Framers of our Constitution provided that the federal law must prevail." *Fidelity Federal*, 458 U.S. at 153, quoting *Free v. Bland*, 369 U.S. 663, 666 (1962).<sup>2</sup>

As to some of the trust funds, escheat of the claimant's right might well substitute the state for the claimant and entitle it to payment. This would clearly *not* be true for claims that by federal law expire as a result of the events that trigger escheat under state law (e.g., death intestate without heirs). Obviously nothing we say prevents state substitution for the claimant where that is consistent with § 1322 and other relevant federal statutes. See generally *United States v. Klein*, 303 U.S. 276 (1938). That the Supreme Court has treated escheat and custodial takings the same way in some contexts, see, e.g., *Texas v. New Jersey*, 380 U.S. 518 (1965), does not make them equivalent in all contexts, and particularly not here, where the need for the distinction is manifest.

Appellants rely heavily on *Roth v. Delano*, 338 U.S. 226 (1949), where the Supreme Court permitted a state to escheat abandoned accounts in a failed national bank. But neither *Roth* nor its predecessor, *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944), which dealt explicitly with custodial takings as well as escheat, is controlling. Both cases involved state efforts to apply their unclaimed property statutes to national banks, which, though subject to heavy federal regulation, are nongovernmental firms. Both opinions emphasized that the state laws did not frustrate any discernible purpose underlying either

---

<sup>2</sup> The argument of three states that the Tenth Amendment forbids Congress to maintain custodial possession of the moneys is without merit.

the federal banking laws or any other federal statute. See *Roth*, 338 U.S. at 230; *Anderson Nat'l Bank*, 321 U.S. at 248-49. Here, by contrast, § 1322 seeks to advance the convenience of the federal government and its creditors by establishing specific federal accounts with which the states propose to interfere.

\* \* \*

The the [sic] judgment of the District Court is affirmed.

*So ordered.*

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

STATE OF ALABAMA, *et al.*,

Plaintiffs,

v.

HON. CHARLES A. BOWSHER,  
*et al.*,

Defendants.

---

Civil Action

No. 88-3717-GHR

ORDER

(Filed June 15, 1990)

This matter is before the Court pursuant to the plaintiff State of Nevada's motion to amend this Court's judgment [sic] of March 30, 1990. The plaintiff contends that it has exhausted its federal administrative remedies asserted by defendants to be applicable to recovery of certain monies allegedly owed by the Financial Management Service ("FMS") of the Department of Treasury ("Treasury"), which have been transferred, pursuant to 31 U.S.C. § 1322(a), to a trust fund titled "Payment of Unclaimed Moneys" ("account 20X6133") and a miscellaneous receipts account titled "Forfeitures of Unclaimed Money and Property" ("account 1060").

In its Memorandum Decision and Order of March 30, 1990, this Court held that in order for a State to recover unclaimed monies that have been transferred pursuant 31 U.S.C. § 1322(a), the state must exhaust its administrative remedies with the transferring agencies. The State of

Nevada contends that it has in fact exhausted its administrative remedies with respect to the FMS itself as a transferring agency. The plaintiff relies upon a February 6, 1989 letter which, as the plaintiff characterizes it, was a "request[] that FMS 'remit' all unclaimed funds in custody or control of federal agencies due a Nevada resident."

As the plaintiff concedes by its own characterization of the letter, the plaintiff was not directing its request to the FMS in its specific role as transferring agency but, rather, as custodian of the accounts into which all of the federal agencies transferred unclaimed monies. Moreover, the letter did not even purport to ask what were the administrative procedures with which the plaintiff had to comply before the FMS. The plaintiff itself cannot characterize a demand for remittance as an exhaustion of administrative remedies without first having determined, from the agency to which it has specifically applied, that a demand is all that is in fact necessary to establish a claim with that agency. As the record of this case demonstrates, the specific administrative procedures which must be followed in order to establish claims may vary among all of the different transferring agencies.

Indeed, the FMS, in answering the plaintiff's letter, interpreted the letter not as a request for the procedures which the plaintiff must follow to assert a claim for monies which the FMS itself had transferred into accounts 20X6133 and 1060, but as a much broader demand for the monies transferred by *all* federal agencies into these accounts of which the FMS was custodian. The FMS' April 24, 1989 response provides:

As you may already know, the Financial Management Service (FMS) is the custodian of the government's "Unclaimed Moneys" account. Agencies are required to monitor their trust funds and annually deposit unclaimed funds into this account. However, FMS does not maintain any record of these deposits other than a cumulative dollar figure. The depositing agencies retain the only supporting documentation necessary to identify these funds.

In order to file claim on any of these funds, you will need to contact the individual agencies believed to be holding funds payable to your residents.

This Court rejects the plaintiff's efforts to recharacterize its letter as a request before the FMS on the procedures it must follow in order to pursue claims with the FMS as the *specific* transferring agency. The letter was simply a cursory demand for monies transferred by *all* the federal agencies into the accounts over which the FMS was merely *custodian*. Although the FMS itself is a transferring agency into these accounts, the letter – on its face – was simply not a request to the FMS in its role as a transferring agency.

Accordingly, it hereby is

ORDERED that the plaintiff State of Nevada's motion to amend judgment be, and the same hereby is, DENIED.

6/15/90  
Date

/s/ George H. Revercomb  
George H. Revercomb  
United States District Judge

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF ALABAMA, et al.,	:	Civil Action
	:	No. 88-3717
Plaintiffs,	:	
	:	FILED
v.	:	Mar. 30 1990
CHARLES A. BOWSHER, et al.,	:	
Defendants.	:	

MEMORANDUM DECISION AND ORDER

The plaintiffs in this matter are twenty-three States who claim the right pursuant to their respective unclaimed property laws to custody of monies belonging to their respective citizens and contained in the United States Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown" as established by 31 U.S.C. § 1322. The defendants in this matter are the Comptroller General of the United States ("Comptroller General") and the Secretary of the Treasury of the United States ("Secretary"). The plaintiffs seek to compel the Secretary and the Comptroller General to settle their claims for the monies in their favor and to disburse the monies accordingly. The plaintiffs also seek to compel the Secretary to provide information regarding the unclaimed monies.

This matter is before the Court pursuant to defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment. The defendants contend that this action is barred by sovereign immunity,

standing, ripeness, failure to state a claim, the Supremacy Clause and exhaustion.

## I. STATUTORY AND ADMINISTRATIVE BACKGROUND

### A. Unclaimed Monies Accounts

The account "UnclaimedMoneys of Individuals Whose Whereabouts are Unknown" is established in 31 U.S.C. § 1322.<sup>1</sup> That provision requires the Secretary to

---

<sup>1</sup> Section 1322 provides:

(a) On September 30 of each year, the Secretary of the Treasury shall transfer to the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown" that part of the balance of a trust fund account named in section 1321(a)(1)-(82) of this title or an analogous trust fund established under section 1321(b) of this title that has been in the fund for more than one year and represents money belonging to individuals whose whereabouts are unknown. Subsequent claims to the transferred funds shall be paid from the account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown."

(b) Except as provided in subsection (c) of this section, necessary amounts are appropriated to the Secretary to make payments from -

(1) the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown"; and

(2) the United States Government account "Refund of Moneys Erroneously Received and

(Continued on following page)

transfer to that account those funds which had been in trust fund accounts listed in 31 U.S.C. § 1321(a)(1)-(82) or analogous trust funds listed in § 1321(b) for more than one year and which represent money belonging to individuals whose whereabouts are unknown.<sup>2</sup> Section 1322 expressly provides that subsequent claims to those monies are to be paid from that account and that necessary amounts will be appropriated for payment of those claims.

---

(Continued from previous page)

Covered" and other collections erroneously deposited that are not properly chargeable to another appropriation.

Subsection (c)(1) of § 1322 references unclaimed Postal Savings Systems deposits and provides that the Secretary shall hold in the "Unclaimed Moneys" account "the balance remaining after the final distribution of unclaimed Postal Savings System deposits" and that balance shall be used "to pay claims for Postal Savings System deposits without regard to the State law or the law of other jurisdictions of deposit concerning the disposition of unclaimed or abandoned property."

<sup>2</sup> 31 U.S.C. § 1321(a)(1)-(82) includes such diverse sources of funds as (9) Library of Congress trust fund, investment account; (14) wages and effects of American seamen, Department of Commerce; (23) Pay of the Navy, deposit funds; (40) Petersburg National Military Park fund; (43) wages due American seamen; (53) unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission; (67) Miscellaneous trust funds of Indian tribes.

Section 1321 does not include those funds from which the large majority of federal benefit payments are made. Many of those funds are subject to statutes which specifically provide for the retention or other disposition of unclaimed benefit payments. *See, e.g.,* Federal Employees Life Insurance Benefit

(Continued on following page)



The Treasury Department has designated two funds to receive deposits of monies deemed unclaimed pursuant to 31 U.S.C. § 1322. Trust fund account number 20X6133 serves as a depository for monies in the amounts of \$25.00 or more which meet certain criteria, and miscellaneous receipt account number 1060 serves as a depository for monies in amounts of less than \$25.00 and for those monies which do not otherwise meet the criteria for transfer into Account 20X6133.<sup>3</sup> See 1 Treasury Financial Manual ("TFM") § 6-3030.

The separate accounts were created to facilitate bookkeeping by the Treasury. Account 1060 is a true "miscellaneous receipts" account; deposits made into this account (unlike Account 20X6133) are not directly available for disbursement. In the event that claims are received by the transferring agencies for items transferred to Account 1060, and the facts indicate that refunds are justified, such claims are paid from account 20X1807 ("Refund of Moneys Erroneously Received and Covered") in accordance with the provisions of 1 TFM § 6-3075.

---

(Continued from previous page)

Fund, 5 U.S.C. § 8705(d); Civil Service Retirement Fund, 5 U.S.C. § 8345(i); Federal Old-Age and Survivors Insurance Fund, 42 U.S.C. § 401(m); and Railroad Retirement Fund, 45 U.S.C. § 231.

<sup>3</sup> Transfer of monies into Account 20X6133 must meet the following criteria: "(a) amount of \$25.00 or more; (b) a refund, upon a claim, would be absolutely justified; (c) there is no doubt as to legal ownership of the funds; (d) a named individual business, or other entity can be identified with the item." 1 TFM § 6-3040.10.

B. Procedures for Transfer of Unclaimed Monies  
Into the Secretary's Custody

The Secretary directs the federal agencies to analyze their various trust, revolving and deposit accounts periodically to determine whether they are holding unclaimed monies and, if so, to take appropriate action to initiate the transfer of such monies to the "unclaimed moneys" accounts. 1 TFM § 6-3030. Although the Treasury Department serves a centralized role as custodian of government funds, it has neither the access to agency records necessary to determine which monies have been held for over one year in the agency accounts nor certifying authority to order the transfer of monies from those accounts to the unclaimed monies accounts. Agencies transfer monies into the unclaimed monies accounts by submitting either a Statement of Transaction (Standard Form 224) or its electronic equivalent. 1 TFM § 6-3040.

The Treasury Department, through its Financial Management Service ("FMS"), maintains only the cumulative or government-wide balance of the unclaimed monies accounts, which reflects the monthly composite balance of deposits and withdrawals. The FMS maintains no records about the nature or origin of any monies transferred into the unclaimed monies accounts by the various agencies, including those within the Treasury Department (*e.g.*, Internal Revenue Service, Bureau of Public Debt). Any such records would be maintained exclusively by the various agencies themselves. 1 TFM § 6-3085. The exact nature of these records may vary from agency to agency. The FMS has no independent knowledge of the internal

accounting practices of any other agency or bureau concerning unclaimed monies and has no government-wide auditing function.

### C. The Claims-Payment Scheme

Accountability for public monies in civilian agencies generally rests with the certifying official of the transferring agency, who has been charged with the responsibility of reviewing, *inter alia*, the "information stated in the certificate, voucher, and supporting records . . . [and] the legality of a proposed payment under the appropriation or fund involved" and, if appropriate, certifying vouchers for payment. 31 U.S.C. § 3528; *see also* 1 TFM §§ 6-3060, 3075. If the certifying official has a question regarding the legality or propriety of the claim – and if Congress has not vested claims settlement in that administrative agency – the agency can submit the matter to the General Accounting Office. 1 TFM § 6-3050; *see also* GAO Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 21.11 (1983).<sup>4</sup>

---

<sup>4</sup> Pursuant to 31 U.S.C. § 3702, the Comptroller General is authorized to "settle all claims of or against the United States." The term "settlement" applies not in the compromise sense, but "has been used from the beginning to describe administrative determination of the amount due." *Illinois Surety Co. v. United States ex rel. Peeler*, 240 U.S. 214, 219-22 (1916). "A claim for purposes of GAO's claims settlement authority means a monetary claim – a claim for the payment of money. Without specific statutory authority GAO is not authorized to consider claims for equitable relief, such as specific performance . . . or the recrediting of sick leave. . . ." GAO, *Principles of Federal Appropriations Law* at 11-8 (1982).

(Continued on following page)

Should the transferring agency determine that the claim for monies is legal and proper, the certifying official will initiate payment through the certification of a Voucher and Schedule of Payment Standard Form 1166 or its electronic certification equivalent. 1 TFM § 6-3060. This payment voucher is then transmitted to a disbursing official, who for most civilian Executive Branch agencies is an employee or official of the Treasury Department.<sup>5</sup> 31 U.S.C. § 3321(a). Since the Secretary's authority to act as disbursing official is expressly limited by 31 U.S.C. 3321(a) to executive agencies, the Legislative and Judicial Branch agencies have their own disbursing authority. *See* 2 U.S.C. § 104a (House of Representatives); 2 U.S.C. §§ 142b, d, e (Library of Congress); 2 U.S.C. § 143 (Architect of the Capitol); 28 U.S.C. § 604(a)(8) (Administrative Office of the U.S. Courts).

Pursuant to 31 U.S.C. § 3325(a), "[a] disbursing official in the executive branch of the United States Government

---

(Continued from previous page)

In recognition that Congress has in certain instances vested other agencies with authority to settle claims, GAO regulations provide claims procedures at 4 C.F.R. Part 31 which apply "to all classes of claims by and against the United States except: (a) Those claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority." 4 C.F.R. § 30.1. GAO has also in certain instances limited its jurisdiction on certain claims, including claims for monies filed in Accounts 20X6133 and 1060.

<sup>5</sup> By statute, however, the disbursing officials for the United States Marshal's Office and the "military departments of the Department of Defense (except for disbursements for departmental pay and expenses in the District of Columbia)" are not Treasury Department employees but, rather, are agency employees designated by the heads of those particular agencies. 31 U.S.C. § 3321(c).

shall (1) disburse money only as provided by a voucher certified by (A) the head of the executive agency concerned; or (B) an officer or employee of the executive agency having written authorization from the head of the agency to certify vouchers." For those agencies for which Treasury Department officials are the disbursing officials, vouchers are sent by the transferring agencies to FMS' Regional Financial Centers instructing payments according to the information contained in the vouchers. The disbursing officials do not review the vouchers to determine the legality or propriety of the underlying claims but, rather, the Regional Financial Centers examine the vouchers to determine if they are in the proper format, have been duly certified and are correctly computed. 31 U.S.C. § 3325(a)(2). The FMS then mails out the payments to the address contained on the form. The Agency Confirmation Report is transmitted to the finance office of the transferring agency as a record of payment.<sup>6</sup> The other agencies which have both certifying and disbursing authority will issue their own payments and notify the Treasury Department of the composite monthly balance. 1 TFM §§ 6-3060, 3075.

Payment of claims for monies in accounts 20X6133 or 1060 are not made through direct contact between the claimant and the FMS (unless the FMS also is the transferring agency for the particular monies claimed). Nor are

---

<sup>6</sup> Disbursal of monies from Account 1060 differs from the above-discussed procedures only to the extent that claims for monies deposited into Account 1060 must be paid from Account 20X1807, "Refund of Money Erroneously Received and Covered." See 1 TFM §§ 6-3070, 3075.

payments from these accounts made by the General Accounting Office. They are made upon authorization of the individual agencies without claims settlement action by GAO. 1 TFM §§ 6-3050, 3060, 3075; *See also* GAO Policies and Procedures for Guidance of Federal Agencies, Title 7, § 21.11. The Treasury Department is not aware of the procedural requirements of other agencies or bureaus for perfecting claims, nor does the Treasury Department set out procedures for determining whether a claim is valid and recoverable.<sup>7</sup>

---

<sup>7</sup> The plaintiffs fail to dispute the existence of the administrative scheme detailed in the Treasury Financial Manual and upon which the defendants extensively rely in compiling their Rule 108(h) statement. Indeed, the plaintiffs completely ignore the TFM in their own Rule 108(h) statement and in their *Opposition to Defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment* ("Opposition to Defendants' Motion"). Rather, the plaintiffs contend that this administrative scheme is inconsistent with § 1322 or, in the alternative, that they are not required to comply with it pursuant to their state unclaimed property laws and the Tenth Amendment. However, these are legal issues and not factual disputes. Accordingly, this Court has deemed admitted all facts identified in defendants' Rule 108(h) statement which the plaintiffs have specifically failed to controvert.

The thrust of *Plaintiffs' Statement of Material Facts in Genuine Dispute* is legal and not factual. For example, plaintiffs contend that "[t]here are no administrative procedures plaintiffs must exhaust to obtain monies held by the Secretary of the Treasury in the unclaimed monies accounts" and "[i]f such procedures do exist, the States are not required to comply with federal administrative procedures applicable to individual claimants in order for the States to recover the monies pursuant to their unclaimed property statutes." *Id.* ¶¶ 6, 7. However, whether the plaintiffs must exhaust the administrative

(Continued on following page)

D. Plaintiffs' Contacts with the Defendants and the Transferring Agencies

None of the plaintiff States claim to have escheated the monies they seek, that is, to have obtained legal title to or actual ownership of the monies through due process procedures which divest the owners of their interests therein. The plaintiff States have not filed claims for custody of monies contained in the unclaimed monies accounts with the transferring agencies.<sup>8</sup> Indeed, the

---

(Continued from previous page)

scheme established by the Secretary in the TFM to obtain the unclaimed monies or whether they can rely on their unclaimed property laws is precisely the legal issue at the center of this case. Plaintiffs' *Opposition to Defendants' Motion* expressly provides:

This is not a complicated lawsuit. The issues are basic and straightforward. The question to be resolved is whether the Secretary, as a holder of unclaimed property as defined under the States' unclaimed property laws, must comply with these laws like any other holder.

*Id.* at 7. This Court fully agrees with plaintiffs that "[t]his is a legal dispute over the right to unclaimed funds that have been transferred to the unclaimed monies accounts." *Id.* at 49 (emphasis added).

The few actual facts which the plaintiffs recite as in dispute are not material to a determination of this case.

<sup>8</sup> The Treasury Department has identified seventeen agencies which have transferred monies into Accounts 20X6133 and/or 1060 since 1984. Those agencies include the U.S. House

(Continued on following page)



plaintiff States have not even contacted the transferring agencies for information on how to proceed or for the identification of unclaimed monies which belong to the citizens of their respective States.

On December 14, 1988, six States, Arizona, Delaware, Illinois, Kansas, Kentucky and Pennsylvania, sent a letter to the Comptroller General which requested: (1) "an acknowledgment that the states have a valid claim" to unspecified monies in the unclaimed monies accounts; (2) a listing of existing trust funds from which the monies had been transferred and of the amounts transferred, as well as the identities of the transferring agencies; (3) "A listing of any procedures, administrative or otherwise, that the states must complete in order to perfect their claims;" and (4) "assurances" that the monies would not be disbursed except to the "lawful owners of the moneys or their respective states of residence." The States threatened to sue if they did not "receive an acknowledgment of the validity of their claim asserted herein" within two weeks.

---

(Continued from previous page)

of Representatives, Architect of the Capitol, Library of Congress and Administrative Office of the U.S. Courts, all of which have their own disbursing authority; three military departments (Army, Navy and Air Force) which also have their own disbursing authority, with certain limited exceptions, *see* 31 U.S.C. § 3321; and the following civilian Executive Branch agencies for which Treasury officials act as disbursing officers: The Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Justice, Labor, Transportation, Treasury, and Veterans Affairs.



On December 30, 1988, the six States, plus the State of Rhode Island, filed the instant action.

On January 3, 1989, Gary L. Kepplinger, Associate General Counsel of the GAO, responded to the December 14, 1988 letter. Kepplinger stated that although GAO "has the statutory authority to settle claims against the United States," such claims "usually involve a claim for a specific amount due." He noted that the December 14 letter, in contrast, "merely requests a general acknowledgment or declaration of your clients' rights and status *vis-a-vis* funds in the unclaimed moneys account as well as the necessary information to perfect your clients' claims. Such a declaratory action is beyond the realm of the [GAO's] claims settlement jurisdiction." Kepplinger further stated that payments from the "unclaimed moneys account" are made "without settlement action by GAO." GAO would only consider such claims "in those cases where the Treasury Department or other agency questions the legality or propriety of any claim."

After the instant suit was filed, five of the plaintiff States (Arizona, Illinois, Kansas, Nevada and Utah) sent letters to Bettsy H. Hettinger, the Director of the Cash Management Division of the Financial Management Service at Treasury, requesting her, in effect, to "search her records for, and produce a listing of, unclaimed property in the custody of federal agencies which are the property of residents of their States." One of the States, Nevada, also asked that Hettinger "report and remit" the monies listed to the State's Unclaimed Property Division. Hettinger replied to the five States, by letter dated April 24, 1989, that "FMS does not maintain any record of these

deposits other than a cumulative dollar figure. The depositing agencies retain the only supporting documentation necessary to identify these funds." Hettinger advised the States that "[i]n order to file claims on any of these funds, you will need to contact the individual agencies believed to be holding funds payable to your residents."

On April 10, 1989, the complaint was amended to add as plaintiffs Alabama, Hawaii, Minnesota, Ohio, Nevada, South Dakota and Utah. On October 6, 1989, the complaint was amended to add as plaintiffs Florida, Iowa, Louisiana, Missouri and Oklahoma. On December 29, 1989, the complaint was amended to add as plaintiffs Montana, New Hampshire, West Virginia and Wisconsin.

## II. SOVEREIGN IMMUNITY

The defendants contend that the instant action is barred by the doctrine of sovereign immunity where the plaintiffs seek, *inter alia*, to compel the defendants to disburse funds in the possession of the federal government and to disburse information. See *Dugan v. Rank*, 372 U.S. 609, 620 (1963); *Stafford v. Briggs*, 444 U.S. 527, 542 n.10 (1980). The defendants contend the plaintiffs "must establish that the United States has waived its immunity with respect to this type of lawsuit." *State of Florida v. United States Dep't of the Interior*, 768 F.2d 1248, 1253 (11th Cir. 1985), *cert. denied*, 475 U.S. 1011 (1986); see also *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *United States v. Testan*, 424 U.S. 392, 399 (1976).

Congress has expressly waived sovereign immunity in suits seeking equitable relief against the federal government in section 702 of the Administrative Procedure Act ("APA") which provides:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States.

5 U.S.C. § 702.<sup>9</sup>

Although the instant suit is not brought under the APA, the caselaw of this circuit confirms that "the waiver applies to any suit, whether under the APA, [28 U.S.C.] § 1331, § 1361, or any other statute." P. Bator, P. Mishkin, D. Meltzer & D. Shapiro, *Hart and Wechsler's The Federal Courts and The Federal System* 1154 (3d ed. 1988); see, e.g., *National Ass'n of Counties v. Baker*, 842 F.2d 369, 373 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 784 (1989) (section 702

---

<sup>9</sup> Section 702 applies to all equitable actions "except to the extent that (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." 701(a). 5 U.S.C. § 701(a).

waived sovereign immunity in action to compel the Secretary to disburse certain appropriated funds); *Schnapper v. Foley*, 667 F.2d 102 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 48 (1982) (section 702 waived sovereign immunity in copyright case); *Sea-land Service, Inc. v. Alaska R.R.*, 659 F.2d 243, 244 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 919 (1982). The issue of whether section 702 acts as a waiver to actions other than those brought under the APA was definitively put to rest by the Supreme Court in *Bowen v. Massachusetts*, 108 S. Ct. 2722 (1988). In *Bowen v. Massachusetts*, the State of Massachusetts brought suit in federal court, invoking 28 U.S.C. § 1331, to challenge a decision by the Secretary of Health and Human Services disallowing reimbursement for certain State expenditures for mental health services under 42 U.S.C. § 1316(d). The Court expressly held that section 702 operated as a waiver of sovereign immunity to judicial review of the action brought by the State challenging the Secretary's disallowance decision. *Id.* at 2731.

The defendants nonetheless contend that the terms of the waiver in section 702 do not apply to the instant action because the plaintiffs cannot demonstrate that they have been wronged by final agency action.<sup>10</sup> The defendants argue that there is no final agency action which has

---

<sup>10</sup> Although the plaintiffs are seeking the disbursement of monies in the possession of the federal treasury, the defendants do not dispute that under section 702 this relief constitutes equitable rather than money damages. In *Bowen v. Massachusetts*, the Court held that a transfer of federal monies to Massachusetts as reimbursement for its expenditures would

(Continued on following page)

wronged the plaintiffs because they have failed to apply to the transferring agencies who are the necessary parties to act upon plaintiffs' claims. The defendants contend that if the plaintiffs made such action, then they very well might obtain the relief that they seek.

As a threshold matter, the defendants are essentially conflating their sovereign immunity argument with their

---

(Continued from previous page)

not constitute money damages. 108 S. Ct. at 2740. The Court distinguished an award of money used as specific relief from an award of "money damages":

"We begin with the ordinary meaning of the words Congress employed. The term 'money damages,' 5 U.S.C.A. § 702, we think, normally refers to a sum of money used as compensatory relief. Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies 'are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled.' D. Dobs, *Handbook on the Law of Remedies* 135 (1973). Thus, while in many instances an award of money is an award of damages, '[o]ccasionally a money award is also a specific remedy.' *Id.* Courts frequently describe equitable actions for monetary relief under a contract in exactly those terms."

*Id.* at 2732-33 (emphasis in original) (quoting *Maryland Dep't of Human Resources v. Department of Health and Human Servs.*, 763 F.2d at 1446). This Court cannot imagine any claim for monies which could be more equitable in nature than the instant case where the plaintiffs are seeking specific monies within the unclaimed monies accounts which they claim they are entitled to under their state law.

exhaustion argument.<sup>11</sup> The problem with the defendants' position is that it ignores the very premise of the lawsuit, namely, that the plaintiffs contend they do not have to apply to the separate agencies but can proceed directly against the defendants for relief. The defendants have apprised the plaintiffs that they will not directly act upon the plaintiffs' claims and this is precisely the agency action that the plaintiffs claim is harming them. The defendants do not contend that there are any other procedures other than through judicial review by which the plaintiffs can challenge the defendants' requirement that the plaintiffs apply to the transferring agencies.

More fundamentally, however, the defendants' argument is premised on the view that the waiver of sovereign immunity in section 702 only applies to final "agency action" defined in 5 U.S.C. § 551(13) as "an

---

<sup>11</sup> One of the reasons for the enactment of the sovereign immunity waiver in section 702 was to eliminate misplaced reliance on sovereign immunity as a means of foreclosing judicial review of a particular government activity:

The need to channel and restrict judicial control over administrative agencies, Congress concluded, could be better achieved through doctrines such as statutory preclusion, exhaustion, and justiciability, rather than through "the confusing doctrine of sovereign immunity." [Citation omitted.] Accordingly, § 702 was designed to "eliminate the defense of sovereign immunity as to any action in a Federal court seeking relief other than money damages and stating a claim based on the assertion of unlawful official action by an agency or by an officer or employee of the agency." [Citation omitted.]

*The Presbyterian Church v. United States*, 870 F.2d 518, 524 (9th Cir. 1989).

agency rule, order, license, sanction, relief, or the equivalent or denial thereof." In light of the plain broadsweeping language of the waiver of sovereign immunity and its clear legislative history, this Court does not accept the defendants' argument.<sup>12</sup>

In *The Presbyterian Church v. United States*, 870 F.2d 518, the court addressed the precise argument which the defendants are making in the instant case, namely, that § 702's waiver of sovereign immunity applies only to "agency action" as defined by the APA. The court squarely rejected that argument, holding:

Nothing in the language of the amendment suggests that the waiver of sovereign immunity is limited to claims challenging conduct falling in the narrow definition of "agency action". . . .

\* \* \*

Moreover, nothing in the legislative history of the 1976 amendment of § 702 suggests that Congress intended to limit the waiver of sovereign immunity to the specific forms of "agency action" enumerated in § 551(13). On the contrary, Congress stated that "the time [has] now come to eliminate the sovereign immunity defense in *all* equitable actions for specific relief against a Federal agency or officer acting in an official capacity." [Citation omitted.] \* \* \* This waiver was clearly intended to cover the full spectrum of agency conduct, regardless of

---

<sup>12</sup> Accordingly, this Court does not need to decide whether the defendants' refusal to directly act upon plaintiffs' request for relief constitutes "agency action" within the meaning of § 551(13).



whether it fell within the technical definition of "agency action" contained in § 551(13).

*Id.* at 525. The defendants make no effort to challenge or distinguish *Presbyterian Church* and this Court accepts its holding and rationale as persuasive.

Accordingly, this Court rules that the plaintiffs' action is not barred by the doctrine of sovereign immunity because section 702 expressly waives that immunity.<sup>13</sup>

---

<sup>13</sup> The plaintiffs further contend that even if there were no express waiver, the doctrine of sovereign immunity does not bar actions which seek the disbursement of federal monies owed to others. However, "[a]lthough plaintiffs' position that they are not suing for the government's money may have some logical appeal, it has been argued and rejected many times before." *Brockelman v. Brockelman*, 478 F. Supp. 141, 142, 143 (D. Kan. 1979) (court rejected argument that sovereign immunity does not attach where "the plaintiffs seek not money belonging to the government, but instead money belonging to the defendants which is merely in the hands of the government"); see also *Buchanan v. Alexander*, 45 U.S. 20, 20-21 (1846) ("So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury."); *Haskin Bros. & Co. v. Morgenthau*, 85 F.2d 677, 681 (D.C. Cir.), cert. denied, 229 U.S. 588 (1936) (monies which come into the "possession of the United States charged with a trust . . . are nevertheless public monies . . . which the United States are charged with the duty of conserving").

The plaintiffs cite *United States v. Klein*, 303 U.S. 276 (1938), as support for the proposition that the fact that the property at issue is in federal custody does not, under the doctrine of sovereign immunity, preclude a party from bringing a suit for

(Continued on following page)



### III. STANDING

The defendants further contend that this court is without jurisdiction to hear this action because the plaintiffs lack standing.

---

(Continued from previous page)

its recovery. In *United States v. Klein*, the Court held that the Pennsylvania state courts could, under the State's escheat statutes, declare an escheat of bonds that had been paid into the registry of a federal district court by a third party and subsequently transferred to the United States treasury. The basis of the Court's rationale upholding the constitutionality of the escheat provisions was twofold. First, the government did not claim that it had any right, title or interest in the funds or that the funds could otherwise escheat to the United States. *Id.* at 280. More fundamentally, however, the Supreme Court expressly noted that the escheat proceeding was *not* an action for the recovery of the funds from the federal government but was simply a proceeding to declare title to the funds:

The present decree for escheat of the fund is not founded on possession and does not disturb or purport to effect the Treasury's possession of the fund or the district's authority over it. Nor could it do so. [Citations omitted.] At most the decree of the state court purports to be an adjudication upon the title of the unknown claimants in the fund . . . [citations omitted], and to confirm the authority of [the State] to make claim to the moneys.

*Id.* at 282. In order to actually recover the funds (and hence disturb the Treasury's possession), the State to whom the funds had escheated would have to petition the district court for an order that the moneys be paid to the State. Accordingly, the escheat statutes which were at issue in *United States v. Klein* did not even purport to be an action for the recovery of funds from the federal treasury. Whether the funds were ever in fact removed from the federal treasury was not a function of the

(Continued on following page)

The requirement of standing is premised on "Article III of the Constitution [which] confines the federal courts to adjudicating actual 'cases' and controversies." " *Allen v. Wright*, 468 U.S. 737, 750 (1984). Standing is necessary to the jurisdiction of this Court to hear this matter. See *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (whether a plaintiff "has made out a 'case or controversy' . . . within the meaning of Article III . . . is the threshold question in every federal case, determining the power of the court to entertain suit.").

The Supreme Court has developed a three-prong model by which to assess Article III standing. A plaintiff must allege: (1) a "personal injury" that is (2) "fairly traceable to the defendant's allegedly unlawful conduct," and (3) which is "likely to be redressed by the requested relief." *Allen*, 468 U.S. at 751; see also *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72 (1978); *Dellums v. United States Nuclear Regulatory Comm'n*, 863 F.2d 968 (D.C. Cir. 1988). The court should apply the three factors to the facts at hand with the following questions in mind: "Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?" *Allen*, 468 U.S. at 752.

---

(Continued from previous page)

independent escheat proceedings in the state courts but a function of the district court's exclusive jurisdiction to dispose of the bonds which it had earlier ordered deposited into its registry. *Id.* at 281.

The burden of establishing standing is on the plaintiff. More fully,

the Court must accept as true all material allegations of the complaint and construe it in favor of plaintiffs, and it may consider matters extrinsic to the complaint itself deemed supportive of plaintiffs' standing. [Citation omitted.] If however, the facts alleged do not permit a reasonable inference that defendants' putatively unlawful conduct caused the harm, or that if the relief requested is afforded the injury will be rectified, standing has not been shown, and the complaint must be dismissed.

*Khalef v. Regan*, 85-1 U.S. Tax Cas. (CCH) ¶ 9269 (D.D.C. 1985), *aff'd*, No. 85-5274 (D.C. Cir. Sept. 19, 1986); see generally *Fulani v. Brady*, 729 F. Supp. 158 (D.D.C. 1990).

#### A. Injury

The defendants claim that the plaintiffs can demonstrate no injury because "[t]hey have not received a determination from the defendants that they are not entitled to the monies they seek." *Defendants' Motion for Judgment* at 30. More specifically, the defendants are contending that until the plaintiffs have exhausted their administrative remedies they cannot claim injury. However, such a position fundamentally mischaracterizes the plaintiffs' claims where the plaintiffs are contending that the defendants' directive to apply to the transferring agencies and to exhaust those administrative remedies is the precise injury of which they complain in the instant case as undermining their state unclaimed property laws. "It is

common ground that States have an interest, as sovereigns, in exercising 'the power to create and enforce a legal code.' " *Alaska v. United States Department of Transportation*, 868 F.2d 441, 443 (D.C. Cir. 1989) (State granted standing where injury asserted is improper federal preemption of State consumer protection statutes) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982)).

The plaintiffs contend that under their unclaimed property laws they are entitled to proceed directly against the Secretary as "holder" of those funds and to compel the Comptroller to settle their claims.<sup>14</sup> More specifically, the plaintiffs contend that the defendants, as "holders" under their unclaimed property laws, have failed to provide a report identifying the owners of the unclaimed monies<sup>15</sup> and to disburse to the plaintiffs all

---

<sup>14</sup> The States' unclaimed property statutes define a "holder" as any person who is in possession of property belonging to another, is a trustee, or is indebted to another on an obligation. The statutes' definition of "person" includes governmental or political subdivisions. See Ala. Code § 35-12-21 (1975); Ariz. Rev. Stat. Ann. § 44-301 (Cum. Supp. 1989); 12 Del. Code Ann. § 1198 (1987); Haw. Rev. Stat. § 523A-1 (1985); Ill. Ann. Stat. ch. 141, ¶ 101 (Smith-Hurd 1986); Iowa Code § 556.1 (Supp. 1989); Kan. Stat. Ann. § 58-3901 (1983); Ky. Rev. Stat. Ann. §§ 393.010, 393.068 (Michie 1984); La. Rev. Stat. Ann. § 9:152 (West Supp. 1989); Mo. Rev. Stat. § 447.503 (Supp. 1989); Nev. Rev. Stat. §§ 120A.080, 120A.110 (1986); Okla. Stat. tit. 60, § 651 (1971); 72 Pa. Cons. Stat. Ann. § 1301.1 (Purdon Supp. 1989); R.I. Gen. Laws § 33-21.1-1 (Cum. Supp. 1989); S.D. Codified Laws Ann. § 43-41A-1 (supp. 1989); and Utah Code Ann. § 78-44-2 (1987).

<sup>15</sup> See Ala. Code § 35-12-31 (1977); Ariz. Rev. Stat. Ann. § 44-317 (1987); 12 Del. Code Ann. § 1199 (1987 & Cum. Supp.

(Continued on following page)

specific monies which they are entitled to hold as custodians.<sup>16</sup> There is no dispute that the defendants will neither identify the owners of the unclaimed monies nor disburse the monies to plaintiffs without a certifying voucher from the transferring agency to which the defendants contend the plaintiffs must apply.

---

(Continued from previous page)

1988); Haw. Rev. Stat. § 523A-17 (1985 & Supp. 1988); Ill. Ann. Stat. ch. 141, ¶ 111 (Smith-Hurd 1986 & Cum. Supp. 1989); Iowa Code § 556.11, *amended by* Iowa Senate File 407, 73d General Assembly (effective July 1, 1989); 1989 Kan. Sess. Laws Ch. 170, § 9; Ky. Rev. Stat. Ann. § 393.110 (Michie Cum. Supp. 1988); La. Rev. Stat. Ann. § 9:168 (West Supp. 1989); Mo. Rev. Stat. § 447.539, *amended by* Mo. House Bill No. 506, 85th General Assembly (effective August 28, 1989); Nev. Rev. Stat. §§ 120A.250 to 120A.260 (Cum. Supp. 1989); Okla. Stat. tit. 60, § 661 (1971 & Supp. 1989); 72 Pa. Cons. Stat. Ann. § 1301.11 (Purdon Supp. 1989); R.I. Gen. Laws § 33-21.1-17 (Cum. Supp. 1989); S.D. Codified Laws Ann. §§ 43-41A-19 to 43-41A-21 (1983 & Supp. 1989); and Utah Code Ann. § 78-44-18 (1987).

<sup>16</sup> Holders have a duty under the States' statutes to remit the unclaimed property of which they are in possession to the States. *See* Ala. Code § 35-12-33 (1975); Ariz. Rev. Stat. Ann. § 44-319 (Cum. Supp. 1989); 12 Del. Code Ann. § 1201 (1987 & Cum. Supp. 1988); Haw. Rev. Stat. §§ 523A-19, 523A-53 (1985 & Supp. 1988); Ill. Ann. Stat. ch. 141, ¶ 113 (Smith-Hurd 1986 & Cum. Supp. 1989); Iowa Code § 556.13, *amended by* Iowa Senate File 407, 73d General Assembly (effective July 1, 1989); Kan. Stat. Ann. § 58-3914 (1983); Ky. Rev. Stat. Ann. § 393.110 (Michie Cum. Supp. 1988); La. Rev. Stat. Ann. § 9:170 (West Supp. 1989); Mo. Rev. Stat. § 447.543, *amended by* Mo. House Bill No. 506, 85th General Assembly (effective August 28, 1989); Nev. Rev. Stat. § 120A.320 (Cum. Supp. 1989); Okla. Stat. tit. 60, § 663 (1971 & Supp. 1989); 72 Pa. Cons. Stat. Ann. § 1301.13 (Purdon Supp. 1989); R.I. Gen. Laws § 33-21.1-19 (Cum. Supp. 1989); S.D. Codified Laws Ann. § 43-41A-27 (1983 & Supp. 1989); and Utah Code Ann. § 78-44-20 (1987).

B. Causation

The defendants further contend that even if the plaintiffs could demonstrate an injury, they fail to meet the causation requirement because the "plaintiffs cannot credibly claim that 'but for' the alleged actions of the defendants, they would have received the monies, since the initial decision whether plaintiffs' claims should be paid rests with independent third parties that are not parties to this action." *Defendants' Motion for Judgment* at 31-32. Again, however, the defendants are not comprehending the thrust of the plaintiffs' complaint which is that they do not have to apply to those independent third parties for the relief that they seek. In other words, the plaintiffs are claiming that as a matter of state law the defendants are the precise parties who should, in the first and final instance, make the decision whether the plaintiffs claims should be recognized and the monies disbursed accordingly.

C. Redressability

Finally, the defendants contend that the plaintiffs cannot establish the redressability requirement of standing. Specifically, the defendants contend that Congress has set up a statutory scheme whereby the Secretary has no authority to disburse monies for four of the transferring agencies (House of Representatives, Library of Congress, Architect of the Capitol and Administrative Office of the U.S. Courts), no authority to disburse for the Departments of Navy, Army and Air Force (with limited exceptions), and no authority to disburse monies without

a certified voucher from the remaining transferring agencies. The defendants contend that this Court cannot order them to comply with the plaintiffs' proposed relief because to do so would require the defendants to circumvent the statutory scheme as established by Congress.

The defendants rely upon *Haskins Bros. & Co. v. Morgenthau*, 85 F.2d 677 (D.C. Cir. 1936), where the court held that the defendants "duties are to receive and preserve the public money and not to disburse it except conformably to law" and that accordingly "[w]e know of no power in this or any other court to compel the Secretary of the Treasury or the Treasurer of the United States, in a suit brought against them in their official capacities, to pay out money in the treasury in a manner contrary to that directed by Congress." *Id.* at 680-81; see also *Royal Indemnity Co. v. United States*, 313 U.S. 289, 294 (1941); *Fansteel Metallurgical Corp. v. United States*, 172 F. Supp. 268, 270 (Ct. Cl. 1959).

Obviously this Court can do no more than order the defendants to comply with the law but the very question begged is whether the defendants' interpretation of the statutory scheme for the disbursement of unclaimed monies under § 1322 is correct. If the defendants' interpretation of the statutory scheme is incorrect then this Court can order the defendants to comply with it and to enact regulations accordingly. See *Center for Auto Safety v. National Highway Traffic Safety Administration*, 793 F.2d 1322, 1334 (D.C. Cir. 1986) (standing granted to consumer organizations challenging new fuel economy standards for cars because injury, the lack of fuel efficient vehicles, would be redressed by ruling requiring increased fuel efficiency); *Action Alliance of Senior Citizens v. Heckler*, 789



F.2d 931, 936-39 (D.C. Cir. 1986) (plaintiffs challenging Health and Human Services' regulations granted standing since, *inter alia*, a court-ordered change in the regulations at issue would redress their injury). Furthermore, even assuming that the defendants' interpretation is correct, the plaintiffs' [sic] alternatively challenge its constitutionality under the Tenth Amendment. This Court certainly has the power to strike down the statutory and administrative scheme relied upon by the defendants if it in fact violates the Tenth Amendment. *Marbury v. Madison*, 5 U.S. 137, 176-80 (1803).

Accordingly, this Court rules that the plaintiffs have standing to bring this action.

#### IV. RIPENESS

The basic rationale for the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.

*Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). Courts determine ripeness by evaluating "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." 387 U.S. at 148-49.

##### A. Fitness of Decision for Judicial Review

In determining fitness of the issues for review, courts look to "whether the issue presented is a purely legal one,



whether consideration of that issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final." *Ciba-Geigy Corp. v. United States Environmental Protection Agency*, 801 F.2d 430, 435 (D.C. Cir. 1986). As the Supreme Court has provided, in order to be "ripe for review" the "disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them." *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 244 (1952).

The defendants contend that the plaintiffs' action must fail under the ripeness doctrine because "[t]here has been no final agency action by either of the defendants or any other agency on the merits of plaintiffs' entitlement to custody of the monies." *Defendants' Motion for Judgment* at 44. Again, however, such a position ignores the fundamental import of the plaintiffs' claims and essentially begs the question that is presented in this case. Although the defendants correctly represent that there has been no agency decision denying the merits of the plaintiffs' claims of entitlement to the monies, the defendants at the same time claim that they are not the proper parties to make that determination and that the plaintiffs must apply to the transferring agencies. The plaintiffs, on the other hand, contend that they do not have to apply to these transferring agencies and have accordingly filed this suit to compel the defendants to make a determination on and disbursement of the monies to which the States claim they are entitled. Although the defendants contend there are complex factual issues which have

never been addressed, i.e., the amounts being claimed, the underlying funds from which those monies have been transferred, and the particular interests of the individual states and of the federal government, before these issues can be addressed it must first be determined who should address those issues, namely, the defendants or the transferring agencies. The issue of who must resolve the underlying factual issues is precisely what this matter is all about and is fit for review.

#### B. Hardship

The defendants contend that when weighing hardship, "the fact that there are available administrative remedies which are not even referred to, much less shown to have been exhausted, is also crucial." However, in the decisions relied upon by the defendants the administrative channels themselves were not being challenged. In the instant case, the plaintiffs are contending that they do not have to comply with the administrative remedies to which the defendants refer. The hardship of requiring the plaintiffs to follow these challenged administrative procedures is twofold. First, as a practical matter, the burden and cost to the plaintiffs of applying to seventeen separate transferring agencies is obviously greater than if the plaintiffs could apply directly to the defendants for relief. The defendants at the hearing in this matter in fact recognized the increased efficiencies to the plaintiffs if they could compel the defendants to act on their claims.

More fundamentally, however, to require the plaintiffs to comply with the administrative procedures they

are challenging as in violation of their unclaimed property laws and the Tenth Amendment would impose on them the very hardship and injury that they are trying to prevent by the filing of this action.

Accordingly, this Court rules that the plaintiffs' complaint is ripe for review. The plaintiffs have established the fitness of the issue for review and have demonstrated that they would suffer hardship if judicial review were denied.

#### V. FAILURE TO STATE A CLAIM

For purposes of a motion to dismiss, the complaint is to be construed in the light most favorable to the plaintiffs and its allegations taken as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Shear v. National Rifle Ass'n*, 606 F.2d 1251, 1253 (D.C. Cir. 1979); *United States v. Kearns*, 595 F.2d 729, 731 (D.C. Cir. 1978). As stated by the Supreme Court:

In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

*Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). This Court's inquiry is directed to whether the allegations constitute a statement of a claim under FED. R. CIV. P. 8(a). *Investors Syndicate of America, Inc. v. City of Indian Rocks Beach*, 434 F.2d 871, 879 (5th Cir. 1970).

The defendants contend that the “[p]laintiffs have failed to allege any duty – statutory or otherwise – on the part of the Secretary to provide the information sought” and to disburse the monies. *Defendants’ Motion for Judgment* at 48. Each of the plaintiff States has an unclaimed property statute which permits it to obtain custody and possession of the funds in the unclaimed monies accounts which are now held by the Secretary and to require the holder of monies to identify the owners. The Amended Complaint, on its face, states that the plaintiffs are seeking relief pursuant to these statutes. The right and capacity of the States to rely upon their unclaimed property laws in a cause of action with respect to property held by the federal government is well-established. See *Roth v. Delano*, 338 U.S. 226 (1949); *Anderson National Bank v. Lockett*, 321 U.S. 233 (1944); *United States v. Klein*, 303 U.S. 276 (1938); *United States v. Alabama*, 434 F. Supp. 64 (M.D. Ala. 1977).

The defendants’ recapitulation of the federal statutory and administrative scheme to support their argument that the plaintiffs have failed to state a claim is again begging the question in this case. The federal statutory and administrative scheme relied upon by the defendants may constitute a defense to the cause of action under the Supremacy Clause or the doctrine of exhaustion but it is not relevant to whether the plaintiffs have stated a claim pursuant to their state unclaimed property laws.

This Court rules that the plaintiffs have stated a claim upon which relief can be granted.

## VI. SUPREMACY CLAUSE

The defendants contend that to require them to comply with the plaintiffs' unclaimed property laws rather than the federal statutory and administrative scheme outlined in Part I of this opinion, *supra*, would violate the Supremacy Clause. The Supremacy Clause of the Constitution provides that "the Laws of the United States which shall be made in Pursuance" of the Constitution "shall be the supreme law of the land." Art. VI, cl. 2. See *City of New York v. Federal Communications Comm'n*, 486 U.S. 57 (1988); *Free v. Bland*, 369 U.S. 663, 666 (1962) ("[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail" and "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield").

The Court's inquiry is "directed toward whether there is a valid federal law, and if so, whether there is a conflict with State law." *Hancock v. Train*, 426 U.S. 167 (1976). Federal law preempts state law

when Congress, in enacting a federal statute, expresses a clear intent to preempt state law . . . , when there is outright or actual conflict between federal and state law . . . , where compliance with both federal and state law is in effect physically impossible . . . , where there is implicit in federal law a barrier to state regulation . . . , where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal laws . . . , or where the state

law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.

*Louisiana Public Serv. Comm'n v. Federal Communications Comm'n*, 476 U.S. 355, 368-69 (1986) (citations omitted).

A. Valid Federal Law

There can be no argument that Congress is without authority to place unclaimed monies in the custody of the Secretary. "When the United States disburses its funds or pays its debts, it is exercising a constitutional function." *Clearfield Trust Co. v. United States*, 318 U.S. 363, 366 (1943). It makes no difference "whether the United States have the use of this money as they do the ordinary revenues of the government or whether the money represents a trust fund created by Congress and earmarked for a specific purpose. In either case it is money in the Treasury of the United States as to which the United States has had and have the power of control and disposition." *Haskins Bros. & Co. v. Morgenthau*, 85 F.2d 677, 681 (D.C. Cir. 1936). Thus, even for monies which come into "possession of the United States charged with a trust," such monies are "nevertheless public moneys . . . which the United States are charged with the duty of conserving." *Id.*; see also *Buchanan v. Alexander*, 45 U.S. 20, 20-21 (1846) (court rejected creditors' attempt to attach seamen's salaries, holding that even though the monies sought to be garnished are owed to the seamen, "[s]o long as money remains in the hands of a disbursing officer, it is as much money of the United States, as if it had not been drawn from the treasury"); *American Guaranty Corp. v. Burton*, 380 F.2d 789, 791 (1st Cir. 1967);

*Brockelman v. Brockelman*, 478 F. Supp. 141, 143 (D. Kan. 1979).

The plaintiffs challenge the validity of the federal law on two grounds. First, they contend that the defendants have misinterpreted § 1322 to require that the plaintiffs apply to the individual agencies. The plaintiffs contend that the defendants have the authority to disburse the monies without a voucher from the transferring agencies.

Section 1322(a) provides that subsequent claims to unclaimed monies from the transferring agencies will be paid from the unclaimed monies accounts established by the Secretary. However, as plaintiffs recognize, § 1322 does not specify the payment procedure. *Plaintiffs' Opposition* at 35 (this section does not "specif[y] the ultimate disposition of the money"). As the plaintiffs further recognize, "[n]othing in the legislative history or language of Section 1332(a) indicates that Congress intended the establishment of the Treasury trust fund receipt account to provide anything more than bookkeeping convenience and safekeeping for the monies deposited therein." *Plaintiffs' Opposition* at 59.

The principal rationale offered by the plaintiff States for proceeding directly against the Secretary is that under § 1322 he is "authorized to make disbursements from this account" and accordingly he does not need a certified voucher from the transferring agency. However, simply because the Secretary may be able to disburse the funds without certifying vouchers from the transferring agencies – an issue which this Court does not need to resolve – does not mean that he is precluded from establishing a scheme whereby he authorizes disbursements only after



receiving certified vouchers from the agencies. This scheme is eminently reasonable where the transferring agencies are the ones with the records in the first instance by which to determine which monies they have held for over one year and accordingly which monies to transfer to the unclaimed monies accounts. This Court defers to the Secretary's interpretation of § 1322. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

The plaintiffs' challenge of the validity of the statutory and administrative scheme under the Tenth Amendment is meritless. This case does not involve the issue of whether § 1322 preempts states' rights to escheat the monies and all the cases relied upon by the States for this proposition are thus not relevant. See footnote 13, *supra* (discussion of *United States v. Klein*, 303 U.S. 276). Rather, the States, relying on their unclaimed property laws, assert a right to obtain *custody* of the monies, hold the monies either in perpetuity or for a specified number of years for the original claimants, and pay any such claims from state-held accounts. *Plaintiffs Initial Response* pp. 3, 12.

#### B. Conflict Between State Laws and § 1322

In *State of Utah v. United States of America*, Civil No. NC 80-0079-J (May 29, 1981), the court rejected the State's suit to compel the Secretary of the Treasury to transfer custody of unclaimed tax refunds checks were allegedly deposited in the predecessor account to § 1322. The court held, *inter alia*:



Congress has established a statutory scheme for the disposition by the United States of unclaimed tax refund checks, thereby preempting the field. Title 31 U.S.C. § 725p provides that all "Unclaimed moneys of individuals whose whereabouts are unknown (Treasury)," including unclaimed federal tax refund checks, are to be covered into a trust fund receipt account in the Treasury to be designated "Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown." Any state law in conflict with the federal statute must fall by virtue of the Supremacy Clause of the U.S. Constitution.

*Id.* at 3. The recodification of Title 31 in 1982 to enact § 1322 into positive law did not diminish the Secretary's custody of the monies.

The plaintiffs contend that *State of Utah* was wrongly decided because there is no evidence – under either § 1322 or its predecessor accounts – that Congress intended for the federal government to maintain custody of the unclaimed monies. However, the *statute itself* authorizes the Treasury to maintain custody of these monies. The plain language and meaning of the statute is the best source of legislative intent and the plaintiffs have found nothing in the legislative history that is plainly inconsistent with the statutory language.<sup>17</sup>

---

<sup>17</sup> That Congress intended for the Treasury to maintain custody of the funds is apparent in subsequent bills introduced in the 100th Congress which, had they passed, would have effected the same relief that the plaintiffs seek here pursuant to § 1322. See S.1612, 100th Cong., 1st Sess. (Aug 5 (or 6) 1987); H.R. 4298, 100th Cong., 2d Sess. (March 30, 1988). As Senator Hatch, the sponsor of S.1612, noted, his bill, the Unclaimed

Therefore, since Congress has the authority to place custody of these monies with the Secretary and has done

---

(Continued from previous page)

Property Act of 1987, would require federal agencies to "turn over the [unclaimed] funds to the states rather than the U.S. Treasury." 133 Cong. Rec. S 11492 (Aug. 6, 1987).

Moreover, that Congress intended the Treasury to maintain custody of the monies is all the more apparent when other statutes are examined where Congress expressly authorized the States to obtain custody of unclaimed monies. The same Congress that recodified title 31 and expressly vested custody of certain unclaimed monies in the Secretary pursuant to § 1322 also enacted a provision effecting transfer to the States' custody of other unclaimed monies being held in the custody of the Comptroller of the Currency. The purpose of the Garn-St. Germaine Depository Institutions Act of 1982, P.L. No. 97-320, 12 U.S.C. § 216, et seq., was "to dispose of unclaimed property in the possession, custody or control of the Comptroller of the Currency," which the Comptroller of the Currency has "acquired from receivers of national banks that failed before and during the pre-WWII Depression." S. Rep. No. 97-536, 1982 U.S. Code Cong. & Adm. News 3082 (1982). The Act expressly provided that states with unclaimed property laws authorizing them to obtain custody or possession of the property could file a claim: "the term 'claimant' means any person or entity, including a state under applicable statutory law, asserting a demonstrable legal interest in the title to, *or custody and possession of*, unclaimed property." 12 U.S.C. U.S.C. [sic] § 216a(3) (emphasis added); see also 1982 U.S. Code Cong & Adm News 3083; 12 C.F.R. § 33.4(a), (f).

Two of the plaintiffs - Illinois and Utah - have acknowledged the need for legislation in order to transfer custody of the monies from the Secretary to the respective States: "The National Association of Unclaimed Property Administrators (NAUPA) will be again submitting legislation that will empower Federal agencies to turn such unclaimed property to the state offices for return to the owners." See Letters to Betty Hettinger of FMS, (Exh. B).

so without any provision requiring transfer to the States' custody upon request, the Supremacy Clause invalidates any state statutes which can be interpreted as providing for state custody of the monies in Accounts 20X6133 and 1060. Section 1322 clearly places the custodial rights to the monies with the Secretary and since both entities cannot have custody the Supremacy Clause requires that § 1322 take precedent. The states simply cannot claim a superior right to custody.

C. Supremacy Clause and State Regulation of Federal Agencies

The plaintiffs contend that the Secretary is a "holder" of unclaimed property pursuant to their respective unclaimed property laws and therefore he must comply with their reporting and disbursing requirements. See Plaintiffs Responses at 6, 9, 13-14, 24. Such contentions, however, are meritless where "it is well established that the doctrine of federal supremacy protects the legitimate activities of the United States Government from regulation by state authorities." *Township of Middleton v. N/E Regional Office, United States Postal Serv.*, 601 F. Supp. 125, 127 (D.N.J. 1985); see also *Hancock v. Train*, 426 U.S. 167, 178 (1976); *United States v. Town of Windsor, Connecticut*, 765 F.2d 16, 18 \*2d Cir. 1985); *Don't Tear It Down, Inc. v. Pennsylvania Avenue Development Corp.*, 642 F.2d 527, 533-34 (D.C. Cir. 1980).

State regulation of federal activities is appropriate "only when and to the extent there is 'a clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and

unambiguous.' " *Hancock v. Train*, 426 U.S. at 179 (state cannot require federal agencies to obtain permits); *see also Don't Tear It Down*, 64 F.2d at 535. This Court can find nothing in 31 U.S.C. § 1322 – nor have plaintiffs pointed this Court to anything – which evidences a "clear congressional mandate" authorizing the States to impose the requirements of their unclaimed property laws on the Secretary. Therefore, any reliance on the States' own laws to compel the disbursement of the monies and the production of information must fail.<sup>18</sup>

---

<sup>18</sup> In addition to reporting and transfer of custody requirements, most of the plaintiffs' unclaimed property laws also authorize civil and/or criminal penalties for failure of a "holder" to comply. It is ludicrous to imply that Congress intended to subject the Secretary not just to state reporting and disbursing requirements but also to monetary penalties and/or jail for failure to comply. The plaintiffs contend that any assertion that the Secretary would be fined or jailed is speculative.

However, the issue is not whether the plaintiffs would exercise discretion in seeking fines and jail sentences but whether in fact their state law – which plaintiffs contend is binding upon the Secretary – authorizes such penalties. The plaintiffs do not dispute that their laws in fact provide for the imposition of fines and jail terms on "holders" – which the plaintiffs contend the Secretary is – of unclaimed property for failure to comply with their disbursing and reporting provisions. *See* Ala. Code § 35-12-31 through 35-12-33, 35-12-45; Ariz. Rev. Stat. §§ 44-317 through 44-319, 44-334; 12 Del. Code Ann. §§ 1199 through 1201, 1207; Ill. Ann. Stat. Ch. 141, ¶ 111 through 113, 125; Kan. Stat. Ann. § 58-3912 through 58-3914, 58-3926; Minn. Stat. §§ 345.41 through 345.43, 345.55; Nev. Rev. Stat. §§ 120A.250, 120A.280, 120A.290A, 120A.320, 120A.440; Ohio Rev. Code Ann §§ 169.03, 169.05, 169.06, 169.99; 72 Pa. Cons. Stat. Ann §§ 1301.11 through 1301.12, 1301.25; S.D. Codified Laws §§ 43-41A-18 through 43-41A-34, 43-41A-25; and

(Continued on following page)

## VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The defendants contend that the State plaintiffs have failed to exhaust their administrative remedies for the disbursement of unclaimed monies where they have failed to apply to the transferring agencies. The plaintiffs concede that they have not directly applied to the transferring agencies but have been contending throughout this litigation that they were not required to under their unclaimed property laws. However, in light of this Court's ruling that the federal statutory and administrative scheme under § 1322 takes precedence over the plaintiffs' unclaimed property laws, the plaintiffs must now exhaust their administrative remedies.

Although the plaintiffs claim that the defendants have failed to identify the specific procedures within each transferring agency by which the plaintiffs must proceed, the undisputed fact is that the defendants themselves are unaware of the agencies' individual procedures for perfecting claims and authorizing vouchers for claimants. Indeed, this is the very reason why the defendants are contending that the plaintiffs must apply to the transferring agencies where these agencies not only have the authority to proceed on the plaintiffs' claims but also possess the information to apprise the plaintiffs on how to proceed.

---

(Continued from previous page)

Utah Code Ann. §§ 78-44-18 through 78-44-20, 78-44-36. The plaintiffs do not attempt to deny – consistent with their position that their state laws apply to the defendants – that the plaintiff States could in fact proceed against the defendants with such penalties.

Accordingly, this Court rules that the plaintiffs have failed to exhaust their administrative remedies and they must contact the particular transferring agency, bureau or office and must comply with its requirements for perfecting a claim.

It hereby is

ORDERED that defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment [sic] be, and the same hereby is, GRANTED.

3/30/90

Date

/s/ George H. Revercomb

George H. Revercomb

United States District Judge

---

UNITED STATES CONSTITUTION

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and the general Welfare of the United States; but All Duties, Imposts and Excises shall be uniform throughout the United States.

U.S. CONST. art. I, §8, cl. 1.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . .

U.S. CONST. art. IV, §3, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or the Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. CONST. amend. X.

---

FLORIDA STATUTES

717.101 Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(2) "Banking organization" means any state or national bank, international banking entity or similar entity, trust company, savings bank, industrial savings bank, land bank, safe deposit company, n1 or private bank or any organization otherwise defined by law as a bank or banking organization.

(3) "Business association" means any corporation (other than a public corporation), joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(4) "Department" means the Department of Banking and Finance.

(5) "Domicile" means the state of incorporation, in the case of a corporation incorporated under the laws of a state, and the state of the principal place of business, in the case of a person not incorporated under the laws of a state.

(6) "Financial organization" means a savings association, savings and loan association, cooperative bank, building and loan association, or credit union.



(7) "Holder" means a person, wherever organized or domiciled, who is:

- (a) In possession of property belonging to another;
- (b) A trustee in case of a trust; or
- (c) Indebted to another on an obligation.

(8) "Insurance company" means an association, corporation, n1 or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, by way of illustration and not limitation, accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(9) "Intangible property" includes, by way of illustration and not limitation:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income.

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.

(c) Stocks, and other intangible ownership interests in business associations.

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.

(e) Amounts due and payable under the terms of insurance policies.

(f) Amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

(10) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(11) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, a claimant, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(12) "Reportable period" means the fiscal year ending June 30 of each year, except for life insurance companies where reportable period means the calendar year ending December 31. Except as in the case of life insurance companies, the first unclaimed property reportable under this Chapter shall be for the fiscal year beginning July 1, 1987, and ending June 30, 1988, and the report due under this chapter shall be filed no later than November 1, 1988. In the case of life insurance companies, the first unclaimed property reportable under this chapter shall be for the calendar year beginning January 1, 1988, and ending December 31, 1988, the report due under this chapter shall be filed no later than May 1, 1989.

(13) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States.

(14) "Utility" means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

---

#### 717.102 Property presumed abandoned; general rule

(1) All intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 5 years after it becomes payable or distributable is presumed abandoned, except as otherwise provided by this chapter.

(2) Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

---

#### 717.103 General rules for taking custody of intangible unclaimed property

Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of the department as unclaimed property if the conditions leading to a presumption of abandonment as

described in § 717.102 and §§ 717.105-717.116 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state; or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a

foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state, and;

(a) 1. The last known address of the apparent owner or other person entitled to the property is unknown; or

2. The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property; and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

---

717.1035 Property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, or created in the state

(i) All intangible property, including, but not limited to, any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the

owner has not claimed or corresponded in writing concerning the property within 3 years after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:

(a) The last known address of the owner is unknown; and

(b) The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or the person or entity is incorporated, organized, or created in this state.

(2) The provisions of subsection (1) shall not apply to property which is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection (1).

(3) The provisions of subsection (1) shall apply to all property held at the time of enactment, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

---

#### 717.104 Traveler's checks and money orders

(1) Subject to subsection (4), any sum payable on a traveler's check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an

interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4), any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than 7 years after its issuance is presumed abandoned unless the owner, within 7 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) No holder may deduct from the amount of any traveler's check or money order any charges imposed by reason of the failure to present those instruments for payment unless there is a valid and enforceable written contract between the issuer and the owner of the property pursuant to which the issuer may impose those charges and the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to the property.

(4) No sum payable on a traveler's check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the

state in which the traveler's check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state; the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased; and the laws of the state of purchase do not provide for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

(5) Notwithstanding any other provision of this chapter, subsection (4) applies to sums payable on traveler's checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

---

717.105 Checks, drafts, and similar instruments issued or certified by banking and financial organizations

(1) Any sum payable on a check, draft, or similar instrument, except those subject to § 717.104, on which a banking or financial organization is directly liable, including, by way of illustration and not limitation, a cashier's check and a certified check, which has been outstanding for more than 7 years after it was payable or after its issuance if payable on demand, is presumed abandoned unless the owner, within 7 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file



prepared by an employee of the banking or financial organization.

(2) No holder may deduct from the amount of any instrument subject to this section any charges imposed by reason of the failure to present the instrument for encashment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and does not regularly reverse or otherwise cancel those charges with respect to the instrument.

---

717.106 Bank deposits and funds in financial organizations

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner has, within 7 years:

(a) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file

prepared by an employee of the banking or financial organization;

(d) Owned other property to which paragraph (a), (b), or (c) is applicable and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at n1 the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

1. Communicated in writing with the banking or financial organization; or

2. Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purpose of paragraph (1)(a), property includes any interest or dividends thereon.

(3) No holder may impose with respect to property described in subsection (1) any charges due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest.

(b) For property in excess of \$2, the holder, no more than 3 months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges shall be imposed or that interest shall cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before July 1, 1987.

(c) The holder regularly imposes those charges or ceases payment of interest and does not regularly reverse or otherwise cancel those charges or retroactively credit interest with respect to such property.

(4) Any property described in subsection (1) that is automatically renewable is matured for purposes of subsection (1) upon the expiration of its initial time period except that, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in § 717.119, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(5) If the documents establishing a deposit described in subsection (1) state the address of a beneficiary of the deposit, and the account has a value of at least

\$25, notice shall be given to the beneficiary as provided for notice to the apparent owner under § 717.117(5). This subsection shall apply to accounts opened on or after October 1, 1990.

---

717.107 Funds owing under life insurance policies

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed abandoned if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in paragraph (3)(b) is presumed abandoned if unclaimed for more than 2 years.

(2) If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is deemed matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)1. The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1; and

3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; subjected the policy to a loan; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan

provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policy holder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing 2 years after July 1, 1987, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(b) The address of each beneficiary.

(c) The relationship of each beneficiary to the insured.

---

#### 717.108 Deposits held by utilities

Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less

any lawful deductions, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

---

#### 717.109 Refunds held by business associations

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than 1 year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

---

#### 717.1101 Stock and other intangible interests in business associations

(1) Except as provided in subsections (2) and (5), any stock or other intangible ownership interest in a business association, the existence of which is evidenced by record available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has for 7 years remained unclaimed by the owner and the owner has not within 7 years:

---



(a) Communicated in writing with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association or its agent prepared by an employee of the association or its agent.

(2) At the expiration of a 7-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest shall not be presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed. If seven dividends, distributions, or other sums are paid during the 7-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the 7-year period of abandonment ceases immediately upon the occurrence of one or more of the conditions referred to in subsection (1). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment



commences and relates back only to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the same time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within 7 years satisfied any of the conditions referred to in subsection (1).

---

717.111 Property of business associations held in course of dissolution

All intangible property distributable in the course of a voluntary or involuntary dissolution of a business association which remains unclaimed by the owner for more than 6 months after the date specified for final distribution is presumed abandoned.

---

717.112 Property held by agents and fiduciaries

(1) All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has within 7 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary or an employee of the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (1) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between said person and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is

the holder of the property insofar as the interest of any other person in the property is concerned.

---

717.113 Property held by courts and public agencies

All intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has remained unclaimed by the owner for more than 1 year after it became payable or distributable is presumed abandoned.

---

717.114 Gift certificates and credit memos

(1) A gift certificate or a credit memo issued in the ordinary course of the issuer's business that has remained unclaimed by the owner for more than 5 years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is equal to the price paid by the purchaser of the gift certificate. In the case of a credit memo, the amount presumed abandoned is equal to the amount credited to the recipient of the credit memo.

---

717.115 Wages —

Unpaid wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business that have remained unclaimed by the owner for more than 1 year after becoming payable are presumed abandoned.

---

717.116 Contents of safe deposit box or other safekeeping repository

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by law, that remain unclaimed by the owner for more than 7 years after the lease or rental period on the box or other repository has expired are presumed abandoned.

---

717.117 Report of abandoned property

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department with respect to the property as provided in this section.

(2) The report shall be verified. Verification of a private corporation or unincorporated association shall be made by an officer; of a partnership, by a partner; and

## App. 75

of a public corporation, by its chief fiscal officer. The report must include:

(a) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of a value of \$25 or more presumed abandoned under this chapter.

(b) In the case of unclaimed funds of \$25 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds.

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the department, and any amounts owing to the holder.

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under \$25 each may be reported in the aggregate.

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Other information which the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a

successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company must be filed before May 1 of each year as of December 31, next preceding. If such report is not filed on or before the applicable filing date, the holder shall pay to the department a penalty of \$10 per day for each day the report is delinquent, but such penalty shall not exceed \$500. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. On written request by any person required to file a report, the department may postpone the reporting date.

(5) Not more than 120 days prior to filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

(6) Any holder of intangible property may file with the department a petition for determination that the property is abandoned requesting the department to accept custody of the property. The petition shall state any special circumstances that exist, contain the information required by subsection (2), and show that a diligent search has been made to locate the owner. If the department finds that the proof of diligent search is satisfactory, it shall give notice as provided in § 717.118 and accept custody of the property.

---

717.118 Notice and publication of lists of abandoned property

(1) The department shall cause a notice to be published not later than March 1 or, in the case of property reported by life insurance companies, September 1 of the year immediately following the report required by § 717.117 at least once in a newspaper of general circulation in the county in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice shall be published in the county in which the holder of the property has its principal place of business within the state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and contain:



(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (1).

(b) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the department.

(c) A statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20 or, in the case of property reported by life insurance companies, before October 20, the property shall be placed not later than May 1 or, in the case of property reported by life insurance companies, not later than November 1 in the custody of the department; and all further claims must thereafter be directed to the department.

(3) The department is not required to publish in the notice any items of less than \$50 unless the department deems their publication to be in the public interest.

(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under § 717.104.

---

#### 717.119 Payment or delivery of abandoned property

(1) Except as otherwise provided in subsections (2) and (3), every person who is required to file a report



under § 717.117 shall, within 6 months after the first date for filing the report as required by § 717.117, pay or deliver to the department all abandoned property required to be reported.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, which will no longer be presumed abandoned, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(3) Property reported under § 717.117 for which the holder is not required to report the name of the apparent owner must be delivered to the department at the time of filing the report.

(4) The holder of any interest under § 717.1101 shall deliver a duplicate certificate, or other evidence of ownership if the holder does not issue certificates of ownership, to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of § 717.1201 to every person, including any person acquiring the original certificate or the duplicate of the certificates issued to the department, for any losses or damages resulting to the person by the issuance and delivery to the department of the duplicate certificate.

(5) Any holder may request an extension in writing of up to 60 days for the delivery of property if extenuating circumstances exist for the late delivery of the property, and the department may grant such an extension in writing.

---

717.1201 Custody by state; holder relieved from liability; reimbursement of holder paying claims; reclaiming for owner; defense of holder; payment of safe deposit box or repository charges

(1) Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of property. Any person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) Any holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment without deduction of any fee or other charges. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the

holder to be entitled to payment. The holder shall be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under § 717.129(1).

(3) Any holder who has delivered property, including a certificate of any interest in a business association, other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without payment of any fee or other charges, upon filing proof that the owner has claimed the property from the holder.

(4) The department may accept an affidavit of the holder stating the facts that entitle the holder to recover money and property under this section as sufficient proof.

(5) If the holder pays or delivers property to the department in good faith and thereafter any other person claims the property from the holder paying or delivering, or another state claims the money or property under that state's law relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this chapter.

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the

facts then known to that person, that the property was abandoned for the purposes of this chapter.

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall make the reimbursement to the holder out of the proceeds remaining after the deduction of the department's selling cost.

---

717.121 Crediting of dividends, interest, or increments to owner's account

Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

---

717.122 Public sale of abandoned property

(1) Except as provided in subsections (2) and (3), the department within 3 years after the receipt of

abandoned property shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department shall have the discretion to withhold from sale any abandoned property that the department deems to be of benefit to the people of the state. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least 3 weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department deems advisable.

(3) Unless the department deems it to be in the public interest to do otherwise, all securities, other than those presumed abandoned under § 717.1101, delivered to the department must be held for at least 1 year before the securities may be sold.

(4) Unless the department deems it to be in the public interest to do otherwise, all securities presumed abandoned under § 717.111 and delivered to the department must be held for at least 3 years before the securities may be sold. Any person making a claim pursuant to this chapter is entitled to receive either the securities

delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to § 717.123, but no person has any claim under this chapter against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the state.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter is entitled to ownership of the property purchased free from all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

---

#### 717.123 Deposit of funds

(1) All funds received under this chapter, including the proceeds from the sale of abandoned property under § 717.122, shall forthwith be deposited by the department in the State School Fund, except that the department shall retain in a separate account an amount not exceeding \$500,000 from which it shall make prompt payment of claims allowed by it. Costs incurred by the department for administration and enforcement of this chapter shall be reimbursed from the State School Fund.

(2) Before making any deposit to the State School Fund, the department shall record the name and last

known address of each person appearing from the holder's reports to be entitled to the abandoned property; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

---

717.124 Filing of claim with department

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant. The department shall determine each claim within 90 days after it is filed. Such determination shall contain a notice of rights provided by § 120.57.

(2) If a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by § 717.121.

(3)(a) If a claimant assigns his rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such claimant, the department is authorized to make distribution of property or money in accordance with such assignment.



(b) Payments made to an attorney or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney or the private investigative agency in a financial institution authorized to accept such deposits and located in this state.

(c) Distribution by the attorney or private investigative agency to the claimant shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests in writing such distribution before it is made.

(d) The department shall not be civilly or criminally liable for any property or funds distributed pursuant to this subsection, provided such distribution is made in good faith.

---

717.125 Claim of another state to recover property; procedure

(1) At any time after property has been paid or delivered to the department under this chapter, another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that



state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subject to custody by this state under § 717.103(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under § 717.104, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property under this section must be presented in a form prescribed by the department, and the department shall determine the claim within 90 days after it is presented. Such determination shall contain a notice of rights provided by § 120.57.

(3) The department shall require a state, prior to recovery of property under this section, to indemnify this state and its officers and employees against any liability on a claim for the property.

---

717.126 Administrative hearing; burden of proof

Any person aggrieved by a decision of the department may petition for a hearing as provided in § 120.57. In any proceeding for determination of a claim to property paid or delivered to the department under this chapter, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence.

---

717.127 Election to take payment or delivery

The department may decline to receive any property reported under this chapter that the department considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within 120 days after filing the report required under § 717.117.

---

717.128 Destruction or disposition of property having insubstantial commercial value; immunity from liability

If the department after investigation finds that any property delivered under this chapter had insubstantial commercial value, the department may destroy or otherwise dispose of the property. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section with respect to the property.

---

717.129 Periods of limitation

(1) The expiration before or after July 1, 1987, of any period of time specified by contract, statute, or court order, during which a claim for money or property may be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than 10 years after the duty arose.

---

717.1301 Investigations; examinations; subpoenas

(1) The department may make investigations and examinations of records within or outside this state as it deems necessary to administer and enforce the provisions of this chapter. In such investigations and examinations the department may administer oaths, examine witnesses, issue subpoenas, and otherwise gather evidence. The department may request any person who has not filed a report under § 717.117 to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(2) Subpoenas for witnesses whose evidence is deemed material to any investigation or examination under this section may be issued by the department under seal of the department, or by any court of competent jurisdiction, commanding such witnesses to appear before the department at a time and place named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection. Such subpoenas may be served by an authorized representative of the department.

(3) If any person shall refuse to testify, produce books, records, and documents, or otherwise refuse to obey a subpoena issued under this section, the department may present its petition to a court of competent jurisdiction in or for the county in which such person resides or has its principal place of business, whereupon the court shall issue its rule nisi requiring such person to obey forthwith the subpoena issued by the department or show cause for failing to obey said subpoena. Unless said person shows sufficient cause for failing to obey the

subpoena, the court shall forthwith direct such person to obey the same subject to such punishment as the court may direct including, but not limited to, the restraint, by injunction or by appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents as the court deems appropriate, until such person has fully complied with such subpoena and the department has completed its investigation or examination. The department is entitled to the summary procedure provided in § 51.011, and the court shall advance the cause on its calendar. Costs incurred by the department to obtain an order granting, in whole or in part, its petition shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(4) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

(5) The material compiled by the department in an investigation or examination under this chapter is confidential until the investigation or examination is complete. The material compiled by the department in an investigation or examination under this chapter remains confidential after the department's investigation or examination is complete if the department has submitted the material or any part of it to any law enforcement agency or other administrative agency for further investigation or for the

filing of a criminal or civil prosecution and such investigation has not been completed or become inactive.

(6) If an investigation or an examination of the records of any person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the costs of investigation or the examination against the holder at the rate of \$100 per day per investigator or examiner.

---

#### 717.1311 Retention of records

(1) Every holder required to file a report under § 717.117 shall, as to any property for which it has obtained the last known address of the owner, maintain a record of the name and last known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by rule of the department.

(2) Any business association that sells in this state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly responsible, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for 3 years after the date the property is reportable.

(3) If a holder fails after July 1, 1987, to maintain the records required by this section and the records of the holder n1 which are available for the periods subject to this chapter are insufficient to permit the preparation of a

report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

---

717.132 Enforcement; cease and desist orders; administrative fines

(1) The department may bring an action in any court of competent jurisdiction to enforce or administer any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department.

(2) In addition to any other powers conferred upon it to enforce the provisions of this chapter, the department may issue and serve upon a person a cease and desist order whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department. Any such order shall contain a notice of rights provided by § 120.57.

(3) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department in an amount not to exceed \$1,000 for each violation.

---



717.133 Interstate agreements and cooperation; joint and reciprocal actions with other states

(1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim or custody. The department may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) The department may join with other states to seek enforcement of this chapter against any person.

(3) At the request of another state, the department may bring an action in the name of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred in bringing the action.

(4) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. The department may pay all expenses including attorneys' fees in any action under this subsection.

(5) As necessary for proper administration of this chapter, the department may enter into contracts for the location or collection of property subject to payment or delivery to the department under this chapter.

---



717.134 Penalties and interest

(1) Any person who willfully fails to render any report or perform other duties required under this chapter is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who willfully refuses to pay or deliver abandoned property to the department as required under this chapter is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) Any person who willfully or fraudulently conceals, destroys, damages, or makes unlawful disposition of any property or of the books, records, or accounts pertaining to property which is subject to the provisions of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) In addition to any damages, penalties, or fines for which a person may be liable under any other provision of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter shall pay to the department interest at the rate of 12 percent per annum on such property, or value thereof, from the date such property shall have been paid or delivered. The department may waive any penalty due under this subsection with appropriate justification.

---

717.135 Agreement to locate reported property

All agreements to pay compensation to recover or assist in the recovery of property reported under

§ 717.117, made within 6 months after such property is reported, are unenforceable, except this section shall not apply to contracts made in connection with guardianship proceedings or the probate of an estate.

---

#### 717.136 Foreign transactions

This chapter does not apply to any property held, due, and owing in a foreign country and arising out of foreign transaction.

---

#### 717.137 Effect of new provisions; clarification of application

(1) This chapter does not relieve a holder of a duty that arose before July 1, 1987, to report, pay, or deliver property. A holder who did not comply with the law in effect before July 1, 1987, is subject to the applicable enforcement and penalty provisions that then existed, and they are continued in effect for the purpose of this subsection, subject to § 717.129.

(2) The initial report filed under this chapter for property that was not required to be reported before July 1, 1987, but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the 10-year period preceding July 1, 1987, as if this chapter had been in effect during that period.

---

717.138 Rulemaking authority

The Department of Banking and Finance shall administer and provide for the enforcement of this chapter. The department is authorized to make rules and to perform such other acts as are necessary or convenient for the proper administration, enforcement, and interpretation of this chapter.

---

717.139 Uniformity of application and construction

This chapter shall be applied and construed as to effectuate its general purpose of protecting the interest of missing owners of property shall go to all the people of the state, and to make uniform the law with respect to the subject of this chapter among states enacting it.

---

717.1401 Repeal

This chapter shall not repeal, but shall be additional and supplemental to the existing provisions of §§ 43.18, 43.19, 402.17, and 550.164 and chapter 716.

---

MINNESOTA STATUTES

**345.31 DEFINITIONS AND USE OF TERMS.**

Subdivision 1. As used in sections 345.31 to 345.60, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. "Banking organization" means any bank, trust company, savings bank, safe deposit company or private banker engaged in business in this state.

Subd. 3. "Business association" means any corporation, joint stock company, business trust, partnership, cooperative, or any association for business purposes of two or more individuals.

Subd. 3a. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. "Financial organization" means any savings and loan association, building and loan association, credit union, industrial loan and thrift company or investment company engaged in business in this state.

Subd. 5. "Holder" means any person in possession of property subject to sections 345.31 to 345.60 belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to sections 345.31 to 345.60.

Subd. 6. "Life insurance corporation" means any association or corporation, including a fraternal beneficiary association as defined in section 64B.01, transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

Subd. 7. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to sections 345.31 to 345.60 or the person's legal representative.

Subd. 8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

Subd. 9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

#### **345.32 PROPERTY HELD BY BANKING OR FINANCIAL ORGANIZATIONS OR BY BUSINESS ASSOCIATIONS.**

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has, within five years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization; or

(4) received tax reports or regular statements of the deposit by mail from the banking or financial organization regarding the deposit. Receipt of the statement by the owner should be presumed if the statement is mailed first class by the banking or financial organization and not returned; or

(5) acted as provided in paragraphs (1), (2), (3) and (4) of this subsection in regard to another demand, savings or time deposit made with the banking or financial organization.

(b) Any funds or dividends deposited or paid in this state toward the purchase of shares or other interest in a business association where the stock certificates or other evidence of interest in the business have not been issued, or in a financial organization, and any interest or dividends thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has within five years:

(1) increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds or deposit; or

(3) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization; or

(4) received tax reports or regular statements of the deposit or accounting by mail from the financial organization or business association regarding the deposit. Receipt of the statement by the owner should be presumed if the statement is mailed first class by the financial organization or business association and not returned.

(c) Any sum, excluding contracted service charges which may be deducted for a period not to exceed one year, payable on checks certified in this state or on written instruments issued in this state, or issued in any other state the law in which for any reason does not apply to the abandonment of sums payable on checks certified in that state or written instruments issued in that state, on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, drafts, money orders and traveler's checks, that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, has been outstanding for more than 15 years from the date of its issuance, or, in the case of money orders, has been outstanding for more than seven years from the date of its issuance, unless the owner has within five years, or within 15 years in the case of traveler's checks, or within seven years in the case of money



orders, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

(1) If the amount due for the use or rental of a safe deposit box has remained unpaid for a period of six months, the bank, savings bank, trust company, savings and loan, or safe deposit company shall, within 60 days of the expiration of that period, send by certified mail, addressed to the renter or lessee of the safe deposit box, directed to the address standing on its books, a written notice that, if the amount due for the use or rental of the safe deposit box is not paid within 60 days after the date of the mailing of the notice, it will cause the safe deposit box to be opened and its contents placed in one of its general safe deposit boxes.

(2) Upon the expiration of 60 days from the date of mailing the notice, and in default of payment within the 60 days of the amount due for the use or rental of the safe deposit box, the bank, savings bank, trust company, savings and loan, or safe deposit company, in the presence of its president, vice-president, secretary, treasurer, assistant secretary, assistant treasurer or superintendent, or such



other person as specifically designated by its board of directors, and of a notary public not in its employ, shall cause the safe deposit box to be opened and the contents thereof, to be removed and sealed by the notary public in a package, in which the notary public shall enclose a detailed description of the contents of the safe deposit box and upon which the notary public shall mark the name of the renter or lessee and, in the presence of one of the bank officers listed above, the notary public shall place the package in one of the bank's general safe deposit boxes and set out the proceedings in a certificate under the notary public's official seal, which shall be delivered to the bank, savings bank, trust company, savings and loan, or safe deposit company.

(3) The bank, savings bank, trust company, savings and loan, or safe deposit company shall hold the contents of abandoned safe deposit boxes until they are claimed by the owner or the bank turns them over to the commissioner pursuant to this chapter.

### **345.33 UNCLAIMED FUNDS HELD BY LIFE INSURANCE CORPORATIONS.**

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person

entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than five years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five years, (1) assigned, readjusted or paid premiums on the policy, or subject the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys or drafts otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

#### **345.34 DEPOSITS HELD BY UTILITIES.**

Any deposit held or owing by any utility made by a subscriber after January 1, 1960, to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, excluding any charges that may lawfully be withheld, that has remained unclaimed by the person appearing on the records of the utility entitled

thereto for more than one year after the termination of the services for which the deposit or advance payment was made is presumed abandoned.

**345.35 STOCK AND OTHER INTANGIBLE INTERESTS IN BUSINESS ASSOCIATIONS.**

(a) Except as provided in paragraphs (b) and (e), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend distribution or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(b) At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year

period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

(c) The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in paragraph (a). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(d) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(e) This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in paragraph (a).

(f) For purposes of this section, stock or other intangible ownership interest in a business association is presumed abandoned if:

(1) it is held or owing by a business association organized under the laws of or created in this state; or

(2) it is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

#### **345.36 PROPERTY OF BUSINESS ASSOCIATIONS AND BANKING OR FINANCIAL ORGANIZATIONS HELD IN COURSE OF DISSOLUTION.**

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

#### **345.37 PROPERTY HELD BY FIDUCIARIES.**

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded

in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary if:

(a) the property is held by a banking organization or a financial organization or by a business association organized under the laws of or created in this state; or

(b) it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) it is held in this state by any other person.

#### **345.38 PROPERTY HELD BY STATE COURTS AND PUBLIC OFFICERS AND AGENCIES.**

Subdivision 1. All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than five years is presumed abandoned except as provided in section 524.3-914.

Subd. 2. This section shall not apply to property held for persons while residing in public correctional or other institutions. As to such persons, said property shall be presumed abandoned if it has remained unclaimed by the owner for more than five years after such residence ceases.

Subd. 3. All intangible personal property held for the owner by any government or political subdivision or agency, that has remained unclaimed by the owner for

more than five years is presumed abandoned and is reportable pursuant to section 345.41, if:

(a) the last known address as shown on the records of the holder of the apparent owner is in this state; or

(b) no address of the apparent owner appears on the records of the holder; and

(1) the last known address of the apparent owner is in this state; or

(2) the holder is domiciled in this state and has not previously transferred the property to the state of the last known address of the apparent owner.

#### **345.381 PROPERTY HELD BY MINNESOTA PUBLIC PENSION FUND.**

No amounts of money held or owing by a public pension fund enumerated in section 356.20, subdivision 2, or 356.30, subdivision 3, or governed by sections 69.77 or 69.771 to 69.776 shall be presumed to have been abandoned for purposes of sections 345.41, 345.42, 345.43, 345.47 and 345.48 if the plan governing the public pension fund includes a provision governing the disposition of unclaimed amounts of money.

#### **345.39 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON.**

Subdivision 1. **Presumed abandonment.** All intangible personal property, not otherwise covered by sections 345.31 to 345.60, including any income or increment thereon, but excluding any charges that may lawfully be



withheld, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to: (a) unclaimed wages or worker's compensation; (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; (d) unidentified remittances, unre-funded overcharges; (e) unpaid claims, unpaid accounts payable or unpaid commissions; (f) unpaid mineral proceeds, royalties or vendor checks; and (g) credit balances, accounts receivable and miscellaneous outstanding checks. This section does not include money orders.

Subd. 2. **Cooperative property.** Notwithstanding subdivision 1, any profit, distribution, or other sum held or owing by a cooperative for or to a participating patron of the cooperative is presumed abandoned only if it has remained unclaimed by the owner for more than seven years after it became payable or distributable.

#### **345.40 RECIPROCITY FOR PROPERTY PRESUMED ABANDONED OR ESCHEATED UNDER THE LAWS OF ANOTHER STATE.**

If specific property which is subject to the provisions of sections 345.32, 345.35, 345.36, 345.37 and 345.39 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 345.31 to 345.60 if:

(a) it may be validly claimed as abandoned or escheated under the laws of such other state; and

(b) the laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

#### **345.41 REPORT OF ABANDONED PROPERTY.**

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the commissioner with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of \$25 or more presumed abandoned under sections 345.31 to 345.60;

(2) in case of unclaimed funds of life insurance corporations, the full name of the policyholder, insured or annuitant and that person's last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$25 each may be reported in aggregate;

(4) the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the commissioner prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder had changed a name while holding the property, the holder shall file with the report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before October 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under sections 345.31 to 345.60 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, inform the owner of the steps necessary to prevent abandonment from being presumed.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) Holders of property described in section 345.32 shall not impose any charges against property which is described in section 345.32, clause (a), (b) or (c).

(h) Any person who has possession of property which the person has reason to believe will be reportable in the future as unclaimed property may, with the permission of the commissioner, report and deliver such property prior to the date required for reporting in accordance with this section.

#### **345.42 NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.**

Subdivision 1. On or before April 1 of each year, the commissioner shall cause notice to be published at least once but not more than twice in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has a principal place of business within this state.

Subd. 2. The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the commissioner; and

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the commissioner to whom all further claims must thereafter be directed.

The commissioner is not required to publish in such notice any item of less than \$25 unless the commissioner deems such publication to be in the public interest.

Subd. 3. On or before April 1 of each year, the commissioner shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of \$25 or more presumed abandoned under sections 345.31 to 345.60. Said notice shall contain:

(a) a statement that, according to a report filed with the commissioner, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(c) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be

placed in the custody of the commissioner to whom all further claims must be directed.

Subd. 4. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 345.32.

### **345.43 PAYMENT OR DELIVERY OF ABANDONED PROPERTY.**

Subdivision 1. Every person who has filed a report under section 345.41, within 20 days after the time specified in section 345.42 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 345.32 within 20 days after the filing of the report, shall pay or deliver to the commissioner all abandoned property specified in the report, except that, if the owner establishes a right to receive the abandoned property to the satisfaction of the holder within the time specified in section 345.42, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the commissioner, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Subd. 2. The commissioner may determine that the payment of abandoned property presents a hardship for a cooperative. On determining that a hardship exists, the commissioner may permit the cooperative to provide payment in equal installments over a period of three years.

(a) If legitimate claims to property reported by the cooperative to the commissioner exceed the installments paid, the excess shall immediately be paid by the cooperative to the commissioner and that amount shall be deducted from the subsequent installments.

(b) This subdivision shall apply only to abandoned property for which reports were filed within 12 months after July 1, 1977.

**Subd. 3. Evidence of ownership.** The holder of an interest under section 345.35 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the commissioner. Upon delivery of a duplicate certificate to the commissioner, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provision of section 345.44 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the commissioner, for any losses or damages resulting to any person by the issuance and delivery to the commissioner of the duplicate certificate.

#### **345.44 RELIEF FROM LIABILITY BY PAYMENT OR DELIVERY.**

Upon the payment or delivery of abandoned property to the commissioner, the state shall assume custody and shall be responsible for the safekeeping thereof and for payment of any claim successfully brought against any holder on account of any abandoned property paid



or delivered to the commissioner. Any person who pays or delivers abandoned property to the commissioner under sections 345.31 to 345.60 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property by any claimant, including any state. The state indemnifies and holds harmless such person as against any such claim and any loss and damage related thereto, provided that such person shall notify the commissioner of any legal proceedings against such person in relation to such claim within ten days after service of process upon such person and thus give the state an opportunity of defending such person in such proceeding. Any holder who has paid moneys to the commissioner pursuant to sections 345.31 to 345.60 may make payment to any person reasonably appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee reasonably appeared entitled thereto, the commissioner shall forthwith reimburse the holder for the payment.

#### **345.45 INCOME ACCRUING AFTER PAYMENT OR DELIVERY.**

When property is paid or delivered to the commissioner under sections 345.31 to 345.60, the owner is not entitled to receive income or other increments accruing thereafter.

#### **345.46 PERIOD OF LIMITATION NOT A BAR.**

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of

a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by sections 345.31 to 345.60 or to pay or deliver abandoned property to the commissioner.

#### **345.47 SALE OF ABANDONED PROPERTY.**

Subdivision 1. Except as provided in subdivisions 3 and 5, all abandoned property other than money delivered to the commissioner under sections 345.31 to 345.60 shall be sold by the commissioner to the highest bidder at public sale in whatever city in the state the commissioner judges to afford the most favorable market for the property involved. The sale must be held whenever the commissioner deems necessary but at least once every ten years. The commissioner may decline the highest bid and reoffer the property for sale if the commissioner considers the price bid insufficient. The commissioner need not offer any property for sale if the opinion that the probable cost of sale exceeds the value of the property.

Subd. 2. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

Subd. 3. Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or, with prior approval of the state board of investment, by another method the commissioner determines advisable. United States government

savings bonds and United States war bonds shall be presented to the United States for payment.

Subd. 3a. **Holding period.** All securities presumed abandoned under section 345.35 and delivered to the commissioner must be held for at least three years before they are sold. A person making a claim under this section is entitled to receive either the securities delivered to the commissioner by the holder, if they still remain in the hands of the commissioner, or the proceeds received from the sale, but no person has any claim under this section against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the commissioner.

Subd. 4. The purchaser at any sale conducted by the commissioner pursuant to sections 345.31 to 345.60 shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The commissioner shall execute all documents necessary to complete the transfer of title.

Subd. 5. The commissioner shall provide the Minnesota historical society with an inventory of abandoned property, other than money, six months prior to public sale. The society may select for its collections any items it finds of historical value. The society shall make its selection before the commissioner appraises or sorts the material for public sale. The society has 90 days from the date of notification by the commissioner to exercise the authority granted by this subdivision.

**345.48 DEPOSIT OF FUNDS.**

Subdivision 1. All funds received under sections 345.31 to 345.60, including the proceeds from the sale of abandoned property pursuant to section 345.47, shall forthwith be deposited by the commissioner in the general fund of the state; except that unclaimed restitution payments held by a court under section 345.38 shall be deposited in the crime victim and witness account created in section 609.101, subdivision 1. Before making the deposit the commissioner shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each policyholder, insured person, or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

Subd. 2. [Repealed, 1979 c 333 s 108]

**345.49 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.**

Subdivision 1. **Filing.** Any person claiming an interest in any property delivered to the state under sections 345.31 to 345.60 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the commissioner.

Subd. 2. **Appropriation.** There is hereby appropriated to the persons entitled to a refund, from the fund in

the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

#### **345.50 DETERMINATION OF CLAIMS.**

Subdivision 1. The commissioner shall consider any claim filed under sections 345.31 to 345.60 and may hold a hearing and receive evidence concerning it. If a hearing is held, the commissioner shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard and the reasons for the decision. The decision shall be a public record.

Subd. 2. If the claim is allowed, the commissioner shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

#### **345.51 JUDICIAL ACTION UPON DETERMINATIONS.**

Any person aggrieved by a decision of the commissioner or as to whose claim the commissioner has failed to act within 90 days after the filing of the claim, may commence an action in the district court to establish a claim. The proceeding shall be brought within 90 days after the decision of the commissioner or within 180 days from the filing of the claim if the commissioner fails to act. The action shall be tried de novo without a jury.

#### **345.515 AGREEMENTS TO LOCATE REPORTED PROPERTY.**

It is unlawful for a person to seek or receive from another person or contract with a person for a fee or

compensation for locating property knowing it to have been reported or paid or delivered to the state treasurer pursuant to chapter 345 prior to seven months after the date of delivery of the property by the holder to the state treasurer as required by section 345.43.

No agreement entered into after seven months from the date of delivery of the property by the holder to the state treasurer is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding ten percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

#### **345.52 ELECTION TO TAKE PAYMENT OR DELIVERY.**

The commissioner, after receiving reports of property deemed abandoned pursuant to sections 345.31 to 345.60, may decline to receive any property reported on deeming it to have a value less than the cost of giving notice and holding sale, or the commissioner may, on deeming it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under section 345.41, the commissioner shall be deemed to have elected to receive the custody of the property.

**345.525 PROPERTY HAVING NO APPARENT COMMERCIAL OR HISTORICAL VALUE.**

The commissioner may withhold the property from sales under this section. If it is determined that property delivered to the commissioner has no commercial or historical value the commissioner may thereafter destroy or otherwise dispose of the property, and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the commissioner pursuant to chapter 345 with respect to the property. The commission shall keep a record of all items destroyed under this section, and all items held by the historical society, including the name and address of the owner of the property and the person who delivered the property to the commissioner, the date of delivery, a description of the property destroyed and the date of destruction.

**345.53 EXAMINATION OF RECORDS.**

Subdivision 1. The commissioner may at reasonable times and upon reasonable notice examine the records of any person if there is reason to believe that the person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60.

Subd. 2. If an examination of the records of a person results in the disclosure of property reportable and deliverable under sections 345.31 to 345.60, the commissioner may assess the cost of the examination against the holder at the rate of \$15 per hour per examiner, but in no case



may the charges exceed the value of the property found to be reportable and deliverable.

#### **345.54 PROCEEDING TO COMPEL DELIVERY OF ABANDONED PROPERTY.**

If any person refuses to deliver property to the commissioner as required under sections 345.31 to 345.60, or pay the interest provided for by section 345.55, subdivision 3, the commissioner may bring an action in a court of appropriate jurisdiction to enforce such delivery or payment.

#### **345.55 PENALTIES.**

Subdivision 1. Any person who willfully fails to render any report or perform other duties required under sections 345.31 to 345.60, shall be guilty of a misdemeanor.

Subd. 2. Any person who willfully refuses to pay or deliver abandoned property to the commissioner as required under sections 345.31 to 345.60 shall be guilty of a gross misdemeanor.

Subd. 3. In addition to any damages, penalties, or fines for which a person may be liable under other provisions of law, any person who fails to pay or deliver unclaimed property within the time prescribed by this chapter after written demand therefor by the commissioner made after March 29, 1978, shall pay to the commissioner interest at the rate of 12 percent per annum on the property or value thereof from the date of the written demand.

**345.56 RULES.**

The commissioner is hereby authorized to make necessary rules to carry out the provisions of sections 345.31 to 345.60.

**345.57 EFFECT OF LAWS OF OTHER STATES.**

Sections 345.31 to 345.60 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1969.

**345.58 CUT OFF DATE.**

Except as to property required to be reported pursuant to Minnesota Statutes 1967, sections 48.521 to 48.528, sections 345.31 to 345.60 shall not apply to property otherwise subject to sections 345.31 to 345.60 which became due or payable or which was in the possession of the holder before January 1, 1944.

**345.59 UNIFORMITY OF INTERPRETATION.**

Sections 345.31 to 345.60 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**345.60 CITATION.**

Sections 345.31 to 345.60 as enacted and hereafter amended, may be cited as the uniform disposition of unclaimed property act.

---

UNITED STATES CODE

Title 31

§ 1321. Trust funds

(a) The following are classified as trust funds:

(1) Philippine special fund (customs duties).

(2) Philippine special fund (internal revenue).

(3) Unclaimed condemnation awards, Department of the Treasury.

(4) Naval reservation, Olangapo civil fund.

(5) Armed Forces Retirement Home Trust Fund.

(6) Return to deported aliens of passage money collected from steamship companies.

(7) Vocational rehabilitation, special fund.

(8) Library of Congress gift fund.

(9) Library of Congress trust fund, investment account.

(10) Library of Congress trust fund, income from investment account.

(11) Library of Congress trust fund, permanent loan.

(12) Relief and rehabilitation, Longshoremen's and Harbor Workers' Compensation Act.

(13) Cooperative work, Forest Service.

(14) Wages and effects of American seamen, Department of Commerce.

App. 127

(15) Pension money, Saint Elizabeths Hospital.

(16) Personal funds of patients, Saint Elizabeths Hospital.

(17) National Park Service, donations.

(18) Purchase of lands, national parks, donations.

(19) Extension of winter-feed facilities of game animals of Yellowstone National Park, donations.

(20) Indian moneys, proceeds of labor, agencies, schools, and so forth.

(21) Funds of Federal prisoners.

(22) Commissary funds, Federal prisons.

(23) Pay of the Navy, deposit funds.

(24) Pay of Marine Corps, deposit funds.

(25) Pay of the Army, deposit fund.

(26) Preservation birthplace of Abraham Lincoln.

(27) Funds contributed for flood control, Mississippi River, its outlets and tributaries.

(28) Funds contributed for flood control, Sacramento River, California.

(29) Effects of deceased employees, Department of the Treasury.

(30) Money and effects of deceased patients, Public Health Service.

(31) Effects of deceased employees, Department of Commerce.

(32) Topographic survey of the United States, contributions.

(33) National Institutes of Health, gift fund.

(34) National Institutes of Health, conditional gift fund.

(35) Patients' deposits, United States Marine Hospital, Carville, Louisiana.

(36) Estates of deceased personnel, Department of the Army.

(37) Effects of deceased employees, Department of the Interior.

(38) Fredericksburg and Spotsylvania County Battlefields memorial fund.

(39) Petersburg National Military Park fund.

(40) Gorgas memorial laboratory quotas.

(41) Contributions to International Boundary Commission, United States and Mexico.

(42) Salvage proceeds, American vessels.

(43) Wages due American seamen.

(44) Federal Industrial Institution for Women, contributions for chapel.

(45) General post fund, National Homes, Veterans' Administration.

(46) Repatriation of American seamen.

(47) Expenses, public survey work, general.

(48) Expenses, public survey work, Alaska.

(49) Funds contributed for improvement of roads, bridges, and trails, Alaska.

(50) Protective works and measures, Lake of the Woods and Rainy River, Minnesota.

(51) Washington redemption fund.

(52) Permit fund, District of Columbia.

(53) Unclaimed condemnation awards, National Capital Park and Planning Commission, District of Columbia.

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia.

(55) Miscellaneous trust fund deposits, District of Columbia.

(56) Surplus fund, District of Columbia.

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act

(58) Inmates' fund, workhouse and reformatory, District of Columbia.

(59) Repealed.

(60) Chamber Music Auditorium, Library of Congress.

(61) Bequest of Gertrude Hubbard.

(62) Puerto Rico special fund (Internal Revenue).

(63) Miscellaneous trust funds, Department of State.

(64) Funds contributed for improvement of (name of river or harbor).

(65) Funds advanced for improvement of (name of river or harbor)

(66) Funds contributed for Indian projects.

(67) Miscellaneous trust funds of Indian tribes.

(68) Ship's stores profits, Navy.

(69) Completing Surveys within Railroad Land Grants.

(70) Memorial to Women of World War, contributions.

(71) Funds contributed for Memorial to John Ericsson.

(72) American National Red Cross Building, contributions.

(73) Estate of decedents, Department of State, Trust Fund.

(74) Funds due Incompetent Beneficiaries, Veterans' Administration.

(75) To promote the Education of the Blind (principal).

(76) Paving Government Road across Fort Sill Military Reservation Okla.

(77) Bequest of William F. Edgar, Museum and Library, office of Surgeon General of the Army.

(78) Funds Contributed for Flood Control (name of river, harbor, or project).



(79) Matured obligations of the District of Columbia.

(80) To promote the education of the blind (interest).

(81) Repealed.

(82) Post-Vietnam Era Veterans Education Account, Veterans' Administration.

(83) United States Government life insurance fund, Veterans' Administration.

(84) Estates of deceased soldiers, United States Army.

(85) Teachers Retirement Fund Deductions, District of Columbia.

(86) Teachers Retirement Fund, Government Reserves, District Columbia.

(87) Expenses of Smithsonian Institution Trust Fund (principal).

(88) Civil Service Retirement and Disability Fund.

(89) Canal Zone Retirement and Disability Fund.

(90) Foreign Service Retirement and Disability Fund.

(b) Amounts (except amounts received by the Comptroller of the Currency and Federal Deposit Insurance Corporation) that are analogous to the funds named subsection (a) of this section and are received by the United States Government trustee shall be deposited in an appropriate trust fund account in the Treasury. Amounts accruing to these funds (except to the trust fund

"Armed Forces Retirement Home Trust Fund") are appropriated to be disbursed in compliance with the terms of the trust. Expenditures from the trust fund "Armed Forces Retirement Home Trust Fund" shall be made only under annual appropriations and only if the appropriations are specifically authorized by law.

---

**§ 1322. Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited**

(a) On September 30 of each year, the Secretary of the Treasury shall transfer to the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown" that part of the balance of a trust fund established under section 1321(a)(1)-(82) of this title or an analogous trust fund established under section 1321(b) of this title that has been in the fund for more than one year and represents money belonging to individuals whose whereabouts are unknown. Subsequent claims to the transferred funds shall be paid from the account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown."

(b) Except as provided in subsection (c) of this section, necessary amounts are appropriate to the Secretary of the Treasury to make payments from -

(1) the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown"; and

(2) the United States Government account "Refund of Moneys Erroneously Received and Covered" and other collections erroneously deposited that are not properly chargeable to another appropriation.

(c)(1) The Secretary of the Treasury shall hold in the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown" the balance remaining after the final distribution of unclaimed Postal Savings System deposits under subsection (a) of the first section of the Act of August 13, 1971 (Public Law 92-117; 85 Stat. 337). The Secretary shall use the balance to pay claims for Postal Savings System deposits without regard to the State law or the law of other jurisdictions of deposit concerning the disposition of unclaimed or abandoned property.

(2) Necessary amounts may be appropriated without fiscal year limitation to the trust fund receipt account to pay claims for deposits when the balance in the account is not sufficient to pay the claims made within the time limitation set forth in paragraph (3) of this subsection.

(3) No claim for any Postal Savings System deposit may be brought more than one year from the date of the enactment of the Postal Savings System Statute of Limitations Act.

(4) The United States Postal Service shall assist the Secretary of the Treasury in providing public notice of the time limitation set forth in paragraph (3) of this subsection by posting notices thereof in all post offices as soon as practicable after the date of the enactment of the Postal Savings System Statute of Limitations Act.

---

2 2  
Nos. 91-402 and 91-416

Supreme Court, U.S.

FILED

NOV 12 1991

OFFICE OF THE CLERK

---

# In the Supreme Court of the United States

OCTOBER TERM, 1991

---

ALABAMA, ET AL., PETITIONERS

v.

CHARLES BOWSHER, COMPTROLLER GENERAL  
OF THE UNITED STATES, ET AL.

---

MINNESOTA AND FLORIDA, PETITIONERS

v.

CHARLES BOWSHER, COMPTROLLER GENERAL  
OF THE UNITED STATES, ET AL.

---

ON PETITIONS FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

---

KENNETH W. STARR  
*Solicitor General*

STUART M. GERSON  
*Assistant Attorney General*

BARBARA C. BIDDLE  
DEBORAH RUTH KANT  
*Attorneys*

*Department of Justice  
Washington, D.C. 20530  
(202) 514-2217*

---

---

## QUESTIONS PRESENTED

Under 31 U.S.C. 1322, the Secretary of the Treasury must transfer unclaimed monies of persons whose whereabouts are unknown to a specified account and pay claims from that account to the rightful owners. The questions presented are:

1. Whether the application of state custodial taking laws requiring the Secretary of the Treasury to transfer those funds to the States violates the Supremacy Clause, U.S. Const. Art. VI (No. 91-402).
2. Whether the Secretary of the Treasury's refusal to account for and transfer those funds to the States violates the Tenth Amendment (No. 91-416).



## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	2
Statement .....	2
Argument .....	5
Conclusion .....	10

## TABLE OF AUTHORITIES

### Cases:

<i>Buchanan v. Alexander</i> , 45 U.S. (4 How.) 20 (1846) .....	6
<i>Fidelity Fed. Sav. &amp; Loan Ass'n v. De La Cuesta</i> , 458 U.S. 141 (1982) .....	7
<i>Hancock v. Train</i> , 426 U.S. 167 (1976) .....	4
<i>Kamen v. Kemper Financial Services, Inc.</i> , 111 S. Ct. 1711 (1991) .....	6
<i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat.) 316 (1819) .....	4
<i>New York v. FCC</i> , 486 U.S. 57 (1988) .....	7
<i>North Dakota v. United States</i> , 110 S. Ct. 1986 (1990) .....	4
<i>United States v. Kimbell Foods, Inc.</i> , 440 U.S. 715 (1979) .....	6
<i>United States v. Oregon</i> , 366 U.S. 643 (1961) .....	10

### Constitution, statutes and rule:

#### U.S. Const.:

Art. VI (Supremacy Clause) .....	3, 4
Amend. X .....	3, 5, 10
5 U.S.C. 8345 (i) .....	2
5 U.S.C. 8705 (d) .....	2
31 U.S.C. 321 .....	7
31 U.S.C. 1321 .....	2
31 U.S.C. 1321 (a) (1) - (82) .....	2
31 U.S.C. 1321 (b) .....	2
31 U.S.C. 1322 .....	2, 3, 4, 5, 6, 7, 8, 9



# IV

## Statutes and rule—Continued:

	Page
31 U.S.C. 1322 (a) .....	2, 8, 9
31 U.S.C. 1322 (b) .....	2
31 U.S.C. 3321 (a) .....	9
31 U.S.C. 3325 .....	8
31 U.S.C. 3325 (a) .....	9
31 U.S.C. 3512 (a) (5) .....	7
31 U.S.C. 3513 (a) .....	7
31 U.S.C. 3528 .....	7, 8, 9
42 U.S.C. 401 (m) .....	2
45 U.S.C. 231 .....	2
Sup. Ct. R. 15.1 .....	6

## Miscellaneous:

78 Cong. Rec. 8244 (1934) .....	8
GAO Policy and Procedures Manual for Guidance of Federal Agencies (1983) .....	8, 9
Treasury Financial Manual:	
1 TFM 6-3020 .....	3, 7
1 TFM 6-3030 .....	3
1 TFM 6-3040.10 .....	3, 7
1 TFM 6-3050 .....	8, 9
1 TFM 6-3060 .....	8, 9
1 TFM 6-3075 .....	8, 9

# In the Supreme Court of the United States

OCTOBER TERM, 1991

---

No. 91-402

ALABAMA, ET AL., PETITIONERS

*v.*

CHARLES BOWSHER, COMPTROLLER GENERAL  
OF THE UNITED STATES, ET AL.

---

No. 91-416

MINNESOTA AND FLORIDA, PETITIONERS

*v.*

CHARLES BOWSHER, COMPTROLLER GENERAL  
OF THE UNITED STATES, ET AL.

---

*ON PETITIONS FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

---

## OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1a-7a,<sup>1</sup> reported at 935 F.2d 332. The opinion of the district court, Pet. App. 8a-41a, is reported at 734 F. Supp. 525.

---

<sup>1</sup> "Pet. App." refers to the appendix to the petition in No. 91-402.

## JURISDICTION

The judgment of the court of appeals was entered on June 11, 1991. The petitions for a writ of certiorari in No. 91-402 and in No. 91-416 were filed on September 9, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. Under 31 U.S.C. 1322, the Secretary of the Treasury is required to transfer certain unclaimed federal funds belonging to individuals whose whereabouts are unknown from trust fund accounts listed in 31 U.S.C. 1321(a)(1)-(82) and 13 U.S.C. 1321(b) to the "Treasury trust fund receipt account 'Unclaimed Moneys of Individuals Whose Whereabouts are Unknown.'" <sup>2</sup> Section 1322(a) provides that "[s]ubsequent claims to the transferred funds shall be paid" from that account and Section 1322(b) provides that necessary amounts will be appropriated for payment of those claims.

Under regulations collected in the Treasury Financial Manual ("TFM"), <sup>3</sup> the Secretary of the Treasury has directed federal agencies that administer trust funds listed in 31 U.S.C. 1321 to determine

---

<sup>2</sup> Trust fund accounts listed in 31 U.S.C. 1321 do not hold funds from which most federal benefits are paid. The statutes authorizing those payments typically provide for the retention or other disposition of unclaimed benefit payments. See, *e.g.*, Federal Employees Life Insurance Benefit Fund, 5 U.S.C. 8705(d); Civil Service Retirement Fund, 5 U.S.C. 8345(i); Federal Old-Age and Survivors Insurance Fund, 42 U.S.C. 401(m); and Railroad Retirement Fund, 45 U.S.C. 231.

<sup>3</sup> The TFM embodies the required reports and accounting that each executive agency must maintain and remit to the Secretary of the Treasury.

whether those accounts hold unclaimed monies and, if they do, to transfer such monies to the unclaimed monies accounts. 1 TFM 6-3030. The Secretary has designated two such accounts, both of which “represent moneys held for rightful owners.”<sup>4</sup> 1 TFM 6-3020, 6-3030; C.A. App. 33.

2. Petitioners, 23 States, filed suit in the United States District Court for the District of Columbia against the Comptroller General and the Secretary of the Treasury. Petitioners claimed that the Secretary—a “holder” of property as defined by their unclaimed property statutes—must prepare a report listing the States in which the missing property owners last resided and the amounts owed, and must remit unclaimed monies to the respective States. Petitioners did not claim any monies on their own account (*e.g.*, by operation of laws of escheat); instead, they sought custody and current use of the monies unless and until the rightful owners appeared.

The district court granted judgment in favor of the federal respondents. Pet. App. 8a-41a. It held that petitioners’ application of their unclaimed property statutes to the monies held by the Treasury under 31 U.S.C. 1322 would violate the Supremacy Clause. U.S. Const. Art. VI. It further held that, since petitioners made no claim to those monies on their own account, their Tenth Amendment claim was “meritless.” Pet. App. 37a.

---

<sup>4</sup> Trust fund account number 20X6133 contains deposits meeting the following criteria: “(a) amount of \$25.00 or more; (b) a refund, upon a claim, would be absolutely justified; (c) there is no doubt as to legal ownership of the funds; (d) a named individual, business, or other entity can be identified with the item.” 1 TFM 6-3040.10. Miscellaneous receipt account number 1060 receives deposits in amounts less than \$25.00 or which do not otherwise meet the criteria for transfer into Account 20X6133.

3. The court of appeals affirmed. Pet. App. 1a-7a. First, it held that application of State unclaimed property laws to monies held by the Treasury under 31 U.S.C. 1322 would violate the intergovernmental immunity component of the Supremacy Clause. That immunity forbids the States from "directly regulat-[ing] the federal government's operations or property." Pet. App. 3a (citing *North Dakota v. United States*, 110 S. Ct. 1986, 1994 (1990); *Hancock v. Train*, 426 U.S. 167, 178-180 (1976); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)). As the court of appeals observed, "[t]he money here is federal money." Pet. App. 4a. Accordingly, application of State unclaimed property laws "would amount to direct regulation of federal property. In extracting funds from the Treasury, the states would effectively subordinate federal property to their own laws and appropriate that property, at least for a period, for themselves." *Ibid.* The court found irrelevant petitioners' contention that State unclaimed property laws had the same objective as 31 U.S.C. 1322, for "the Supremacy Clause does not permit [petitioners] to take over a federal program just because they think they can do it better." Pet. App. 5a.

Second, the court of appeals held that application of State unclaimed property laws to the unclaimed monies at issue here was preempted by 31 U.S.C. 1322. "In passing § 1322, Congress was concerned to preserve or advance the convenience both of the claimant in securing payment and of the government in making it." Pet. App. 5a. Application of State unclaimed property laws "would plainly thwart Congress's aims":

Transferring the money from the Treasury to the states would surely make it less, not more, accessible to claimants, who presumably picture

the federal government as the relevant payor. Alternatively, for the federal government to send the money off to a state, and then recoup it for purposes of payment, would multiply the transactions needed to accomplish the otherwise fairly simple federal objective.

*Id.* at 5a-6a. The court of appeals observed that the States' historic power to escheat property was not at issue, and distinguished decisions concerning escheated property owned by the State from the custodial interest asserted by petitioners in this case. *Ibid.*

The court of appeals, like the district court, summarily rejected petitioners' Tenth Amendment argument as being "without merit." Pet. App. 6a n.2.

### ARGUMENT

Contrary to petitioners' contention (91-402 Pet. 10), the States need not be given custody of unclaimed federal monies held in the United States Treasury in order for "state statutes to play a meaningful role in our federal system."

1. The intergovernmental immunity doctrine prevents the States from applying their unclaimed property laws to funds held by the Secretary of the Treasury under 31 U.S.C. 1322. Petitioners do not seriously dispute that the accounts established by the Secretary of the Treasury pursuant to that Section contain "federal money." Pet. App. 4a. As the court of appeals explained: "That various persons have claims against the United States in amounts exactly matching the funds, and intended by Congress to be paid from these funds, does not give those individuals a property interest in the money." *Ibid.* Moreover, this Court has recognized Congress's preeminent authority to manage federal property—even when that

property is held to pay a debt. *Buchanan v. Alexander*, 45 U.S. (4 How.) 20, 20-21 (1846). For purposes of intergovernmental immunity analysis, it is beside the point whether application of State unclaimed property laws would help or hinder the objective of locating the rightful owners of the unclaimed monies. For it is beyond peradventure that those laws—which may require as many as 50 different forms of accounting, reports, and arrangements for the transfer of funds—interfere with the Treasury Secretary’s administration of the monies entrusted to him under 31 U.S.C. 1322.

Contrary to petitioners’ contention (91-402 Pet. 17-23), 31 U.S.C. 1322 cannot be “filled in” with State unclaimed property laws. To begin with, petitioners did not press this argument in the court of appeals and that court did not pass on it. It is therefore not properly before this Court. See Sup. Ct. R. 15.1. In any event, 31 U.S.C. 1322 leaves no gaps to be filled. Unlike *Kamen v. Kemper Financial Services, Inc.*, 111 S. Ct. 1711, 1717 (1991), which addressed a gap in federal securities laws regarding the scope of the demand requirement in shareholder derivative litigation, or *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979), which concerned the absence of lien priority rules in federal lending programs, 31 U.S.C. 1322 itself specifies where the balance of specified trust funds accounts “shall” be transferred (the Treasury trust fund receipt account “Unclaimed Moneys of Individuals Whose Whereabouts are Unknown”) and suggests when the custodianship of the Secretary of the Treasury shall end (upon the payment of “[s]ubsequent claims to the transferred funds” to claimants). Since Section 1322 itself designates the account to which the transferred funds are to be deposited (until the



rightful owners make claims through the appropriate agencies, 31 U.S.C 3528), there is no authority to resort to State unclaimed property laws to find a custodian for those funds.

2. In the alternative, Section 1322 preempts State unclaimed property laws. The relevant inquiry is whether Congress intended the control and disbursement of federal monies to satisfy federal debt to be a federal matter—either because the legislation is so pervasive, or the federal interest is so dominant that it should be presumed that the federal scheme prevails over state law. And federal regulations implementing a statutory scheme can preempt state law.<sup>5</sup> *New York v. FCC*, 486 U.S. 57, 63-64 (1988); *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153 (1982). The fact that state property law is at issue does not alter the preemption analysis. *Id.* at 153.

State unclaimed property laws are inconsistent with 31 U.S.C. 1322. As the court of appeals reasoned, Congress believed that collecting “all unclaimed money accounts under one head” would make the funds “more accessible” to the claimants and simpler

---

<sup>5</sup> Indeed, the federal regulations in this case make clear that the unclaimed monies in the Section 1322 accounts are held for “rightful owners.” 1 TFM 6-3020, 6-3040.10. In this way, the regulations track the statutory scheme, 31 U.S.C. 3528, which dictates that certifying officials at the transferring agencies determine who has a valid claim for payment under the various trust statutes which set forth the creditors or rightful claimants.

Contrary to petitioners’ contention (91-402 Pet. 7, 15-16), the regulations are no less regulations because they are not in the Code of Federal Regulations. The Secretary of the Treasury promulgated those regulations pursuant to 31 U.S.C. 321, 3512(a)(5), and 3513(a). They exhaust the reporting and accounting requirements related to Section 1322 funds.

for the federal government to administer. Pet. App. 5a (quoting 78 Cong. Rec. 8244 (1934) (statement of Rep. Griffin)). Although petitioners contest the wisdom of collecting unclaimed federal monies in a single Treasury account (91-402 Pet. 15), that Congress required such a transfer is beyond dispute. By dispersing unclaimed federal monies into 50 State accounts, application of State unclaimed property laws would reverse the very consolidation that Congress required.

State unclaimed property laws trench on other provisions of 31 U.S.C. 1322 and other federal laws. State laws require transfer of unclaimed funds to State custodians; Section 1322(a) limits disbursements to claimants (*i.e.*, those with "claims to the transferred funds"). State laws have independent procedures for identifying claimants; 31 U.S.C. 3325 and 3528 authorize disbursement from the Section 1322 accounts to claimants only after the agency administering the original trust statute authorizes the payment under the relevant federal statutes.<sup>6</sup> State

---

<sup>6</sup> Sections 3325 and 3528, together with Section 1322, form part of a comprehensive disbursement and certification scheme to manage federal money in the Treasury, including federal debt. Payment of claims for monies in accounts 20X6133 or 1060 typically are authorized by the certifying officials at the individual agencies without claims settlement action by GAO. 1 TFM 6-3050, 3060, 3075. See also GAO Policies and Procedures Manual for Guidance of Federal Agencies, Title 7, § 21.11 (1983). Thus, the claimant must contact the particular transferring agency, bureau, or office and must comply with the requirements of that agency, bureau, or office for perfecting a claim. C.A. App. 35-36. The certifying official at the transferring agency, charged with the responsibility of reviewing claims for payment, must examine, *inter alia*, the "information stated in the certificate, voucher, and supporting records \* \* \* [and] the legality of a proposed pay-

unclaimed property laws purport to extinguish the liability of the federal government (as a holder of unclaimed property turned over to the State), Pet. App. 54a-55a, 61a; 31 U.S.C. 1322(a) provides that claims to the transferred funds "shall be paid" by the Secretary of the Treasury.

It bears emphasis that petitioners make no claim to title or ownership of unclaimed federal monies held pursuant to Section 1322. That a State law of escheat might support a State's claim to Section 1322 funds, therefore, does not imply that State unclaimed property laws can give rise to a similar claim.

3. The Secretary of the Treasury's refusal to account for and turn over unclaimed federal monies

---

ment under the appropriation or fund involved" and, if appropriate, certify vouchers for payment. 31 U.S.C. 3528; see C.A. App. 35-36; 1 TFM 6-3060, 6-3075. If the certifying official has a question regarding the legality or propriety of the claim—and if Congress has not vested claims settlement action in that administrative agency—the agency can submit the matter to the General Accounting Office. 1 TFM 6-3050; see GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 21.11 (1983); C.A. App. 30, 36.

Should the transferring agency determine that the claim for monies is legal and proper, the certifying official will initiate payment through the certification of a Voucher and Schedule of Payment Standard Form 1166 or its electronic certification equivalent. 1 TFM 6-3060; C.A. App. 36. This payment voucher is then transmitted to a disbursing official, who for most civilian Executive Branch agencies is an employee or official of the Treasury Department. 31 U.S.C. 3321(a); see C.A. App. 35-36. Pursuant to 31 U.S.C. 3325(a), "[a] disbursing official in the executive branch of the United States Government shall (1) disburse money only as provided by a voucher certified by (A) the head of the executive agency concerned; or (B) an officer or employee of the executive agency having written authorization from the head of the agency to certify vouchers."

that do not belong to any State does not violate the Tenth Amendment. That Amendment protects, at most, the prerogatives of the States as States. Although petitioners are correct (No. 91-416 Pet. 16) that State property law is a traditional State concern, federal monies in the United States Treasury do not fall within that historic sphere. Cf. *United States v. Oregon*, 366 U.S. 643, 648-649 (1961).

#### CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR  
*Solicitor General*

STUART M. GERSON  
*Assistant Attorney General*

BARBARA C. BIDDLE  
DEBORAH RUTH KANT  
*Attorneys*

NOVEMBER 1991

